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**Supreme Court of the United States**

**OCTOBER TERM, 1933**

**No. 339**

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**HENRY S. LONG, CHAIRMAN, AND JOHN P. KOHN,  
SR., AND W. W. RAMSEY, AS MEMBERS COMPRIS-  
ING THE STATE TAX COMMISSION OF THE  
STATE OF ALABAMA, ET AL., APPELLANTS,**

**vs.**

**WALTER STOKES, JR., AS COMMISSIONER OF  
FINANCE AND TAXATION OF THE STATE OF  
TENNESSEE**

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**APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE**

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**FILED SEPTEMBER 10, 1933**

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[fol. 4]

**IN CHANCERY COURT OF DAVIDSON COUNTY, AT  
NASHVILLE, TENNESSEE**

**PART ONE**

ORIGINAL BILL OF COMPLAINT—Filed February 9, 1938

To the Honorable R. B. C. Howell, Chancellor, Holding  
Part One of the Chancery Court of Davidson County,  
Tennessee:

The Bill of Complaint of Nashville Trust Company, a banking corporation chartered under the laws of the State of Tennessee, with its principal place of business in Nashville, Davidson County, Tennessee, and Title Guarantee Loan & Trust Company, a banking corporation chartered under the laws of the State of Alabama, with its principal office and place of business in Birmingham, Alabama, Executors of the Estate of Grace C. Scales, deceased, Complainants, [fol. 5] against Walter Stokes, Jr., a resident of Davidson County, Tennessee, Commissioner of Finance and Taxation of the State of Tennessee, and Henry S. Long, Chairman and John P. Kohn, Sr., and W. W. Ramsey, Associates, members of and comprising the State Tax Commission of the State of Alabama, all residents of Montgomery County, Alabama, Defendants,

Complainants respectfully show to the Court as follows:

**I**

The names and residences of the parties are correctly stated in the caption. The defendant, Walter Stokes, Jr., is the official charged with the duty of collecting all succession or inheritance taxes lawfully due the State of Tennessee; the defendants Henry S. Long, John P. Kohn, Sr., and W. W. Ramsey, comprising the Alabama State Tax Commission, are the officials charged with the duty of collecting succession or inheritance taxes lawfully due the State of Alabama. Complainants are the duly qualified executors of the estate of Mrs. Grace C. Scales, deceased.

Complainants file this suit under Section 8835 to 8847, inclusive, of the Tennessee Code of 1932, known as the [fol. 6] Tennessee Declaratory Judgments Act, for the purpose of obtaining an adjudication as to whether the State of Alabama or the State of Tennessee is entitled to collect inheritance taxes or death transfer taxes on a certain portion of the estate of Mrs. Grace C. Scales, which portion both of said States are seeking to tax.

## II

By an instrument dated December 29, 1917, Mrs. Grace C. Scales, a resident of Davidson County, Tennessee, conveyed certain stocks and bonds to complainant, Title Guarantee Loan & Trust Company. By paragraph 1 said Trustee was directed to hold securities having a par value of \$50,000.00 in trust for the benefit of Mrs. Scales' daughter, Ann Scales Benedict, for the life of Mrs. Benedict, with remainder on her death to her heirs. Paragraph 2 of said instrument directed the Trustee to hold securities having a par value of \$50,000.00 in trust for Mrs. Scales' son, Ellsworth P. Scales, the terms of this trust being the same as those set out in the trust for Mrs. Benedict.

In paragraph 3 of said trust instrument Mrs. Scales directed the said Trustee to hold securities valued at approximately \$300,000.00 in trust, the income to be paid to the settlor during her lifetime. Upon her death said securities held by the Trustee under said Paragraph 3 were to be added to and made a part of the two trusts created by [fol. 7] Paragraphs 1 and 2 of said instrument. However, in section (d) of said Paragraph 3 Mrs. Scales reserved to herself the right to authorize and direct any encroachment upon the corpus of the trusts created by said paragraph which she might deem proper; and by Section (b) of paragraph 3 she reserved the right to dispose of the property described in said Paragraph 3 by will. A true and exact copy of said trust instrument is hereto attached and made a part hereof marked Exhibit "A" but need not be copied in issuance of process.

## III

By a subsequent instrument dated January 11, 1929, the said Mrs. Scales released and extinguished all of her rights set out in Section (d) of Paragraph 3 of the trust in-

strument of 1917, referred to above, as to certain bonds of the Pratt Consolidated Coal Company. She reserved to herself, however, the rights under Section (b) of Paragraph 3 of said trust instrument to dispose of said property by will. A true and exact copy of said instrument of January 11, 1929, is attached hereto and made a part hereof, marked Exhibit "B"; but need not be copied in issuance of process.

#### IV

Thereafter, on or about November 4, 1926, the said Mrs. Scales died a resident of Davidson County, Tennessee, leaving a will and two codicils, which were admitted to probate [fol. 8] in the County Court of Davidson County, Tennessee, on or about November 12, 1936, and are of record in Will Book 53, page 321, of said County Court.

In said will Mrs. Scales appointed complainant, Nashville Trust Company, executor as to such of her property as might be found in Tennessee, and she appointed complainant, Title Guarantee Loan & Trust Company, executor of such of her property as might be found in Alabama. Mrs. Scales chose to exercise the power of disposition of the trusts set up by Paragraph 3 of the trust instrument of 1917, herein referred to, and by her will undertook to dispose of said property as follows:

1. Securities to the value of \$100,000 were devised to complainant, Title Guarantee Loan & Trust Company, in trust, the income to be paid to Ann S. Benedict during her life, and after her death the income to be paid to her lineal descendants until twenty-one years after the death of the latest survivor of said lineal descendants living at the time of Mrs. Scales' death, at which time the corpus shall be distributed among said lineal descendants per stirpes.

2. Securities values at \$100,000 were devised to complainant, Title Guarantee Loan & Trust Company, in trust for [fol. 9] Ellsworth P. Scales. The terms of this trust are the same as those in the trust for Mrs. Benedict.

3. Securities valued at \$13,000.00 were devised to complainant, Title Guarantee Loan & Trust Company, in trust, the income to be paid to Mrs. Scales' granddaughter, Margaret Walton Scales, until said beneficiary reaches the age of twenty-one years, at which time the corpus shall be turned over to her.



After setting up the three trusts mentioned above, Mrs. Scales devised and bequeathed the balance of her property both in Tennessee and Alabama, to certain named persons, all residents of the State of Tennessee.

A true and correct copy of said will and codicil is attached hereto and made a part hereof marked Exhibit C, but need not be copied in issuance of process.

## V

On or about November 12, 1936, complainant, Nashville Trust Company, duly qualified in the County Court of Davidson County, Tennessee, as executor of said will, and thereafter, on or about December 3, 1936, complainant, Title Guarantee Loan & Trust Company, qualified as executor of said will in the State of Alabama. Copies of Letters Testam[fol. 10]entary issued to both complainants will be filed at or before the hearing.

## VI

Complainants aver that thereafter defendants, Henry S. Long, John P. Kohn, Sr., and W. W. Ramsey, acting in their official capacity as the Alabama State Tax Commission, levied and assessed a state inheritance tax or death transfer tax on all of that portion of Mrs. Scales' estate found at the time of her death in the State of Alabama, said property totaling approximately \$230,000.00.

Complainants further aver that defendant, Walter Stokes, Jr., acting in his official capacity as Commissioner of Finance and Taxation of the State of Tennessee, had claimed for the State of Tennessee a state inheritance tax or death transfer tax upon the whole of Mrs. Scales' estate, including that portion assessed by the State of Alabama.

## VII

Complainants aver that they are ready and willing to pay such taxes as are properly due the State of Tennessee and such taxes as are properly due the State of Alabama; but complainants are advised that they ought not to be compelled to pay inheritance taxes or death transfer taxes upon the same portions of Mrs. Scales' estate to both Tennessee [fol. 11] and Alabama, such taxation being in violation of the Fourteenth Amendment to the Constitution of the United States.

Complainants therefore file this bill under the Tennessee Declaratory Judgments Act referred to above, for the purpose of having determined what taxes it should pay to the State of Tennessee and what taxes it should pay to the State of Alabama. Complainants aver that all parties interested in the determination of this question have been joined as parties hereto.

Complainants are advised and aver that defendants, Henry S. Long, John P. Kohn, Sr., and W. W. Ramsey, members of and comprising the State Tax Commission of the State of Alabama, have agreed voluntarily to enter an appearance and to invoke the jurisdiction of this Honorable Court in this case for the purpose of having the rights of the State of Alabama as well as the rights of the State of Tennessee adjudicated in one proceeding.

### VIII

Premises considered, complainants pray:

1. That process issue to compel defendant, Walter Stokes, Jr., Commissioner of Finance & Taxation of the State of [fol. 12] Tennessee, to appear and answer this bill, but not under oath, the oath being hereby expressly waived: and

2. That at the hearing the Court determine what portions of the estate of Mrs. Grace C. Scales, deceased, are taxable by the State of Tennessee, and what portions of said estate are taxable by the State of Alabama; and

That complainants have such other, further, and general relief as they may be entitled to receive in the premises.

Chas. C. Trabue, Jr., Trabue, Hume & Armistead,  
Solicitors for Complainants.

We will be surety for costs: Trabue, Hume & Armistead,  
by Chas. C. Trabue, Jr.

[fol. 13] EXHIBIT "A" TO ORIGINAL BILL

STATE OF ALABAMA,  
Jefferson County:

This Indenture Made and Entered into by and between  
Grace C. Scales and the Title Guarantee Loan & Trust Com-



pany, a body corporate under the laws of Alabama, as trustee,

Whereas, Grace C. Scales owns certain stock and bonds that she desires to place in trust with the Title Guarantee Loan & Trust Company, as trustee under the terms hereof.

Now in Consideration of the Premises, and in consideration of One (\$1.00) Dollar to the undersigned Grace C. Scales in hand paid by the Title Guarantee Loan & Trust Company, trustee, receipt whereof is hereby acknowledged, and the further consideration of the Title Guarantee Loan & Trust Company as trustee agreeing to do and perform the duties herein imposed upon the said Title Guarantee Loan & Trust Company, as trustee, by this instrument,

Par. 1. The undersigned Grace C. Scales does by these presents grant, sell, transfer, assign and deliver to the Title Guarantee Loan & Trust Company, trustee Fifty (50) [fol. 14] bonds issued by the Pratt Consolidated Coal Company numbered one (1) to fifty (50), both inclusive, each of said bonds being for \$1,000.00, each bearing date as of the 1st day of April, 1905, each bearing interest at the rate of 5% per annum, payable semi-annually, with coupons due July 1st, 1918, and all subsequent coupons attached, each of said bonds being secured by mortgage or deed of trust referred to in said bonds. These Fifty bonds, the Title Guarantee Loan & Trust Company, as trustee, and hereinafter called trustee, is to hold in trust for the uses and benefit of Ellsworth P. Scales, upon the following trusts and conditions to wit:

(a) The trustee is to hold, manage and look after the said trust property, and shall pay over the net income and profits therefrom to the said Ellsworth P. Scales, during his life, or to whomsoever he may in writing direct.

If at any time during the life of the said Ellsworth P. Scales, the income and profits of the trust property received by him from this trust is in his opinion insufficient for his comfortable support and maintenance, he may in writing direct the trustee to sell and dispose of such portion of such property as he sees fit, in which event it shall be the duty of the trustee to sell and dispose of the property as directed in writing, and pay over the amount received [fol. 15] therefrom to the said Ellsworth P. Scales.

The said Ellsworth P. Scales may at any time he sees fit, direct the trustee to sell the trust property, or any part

thereof, for reinvestment and reinvest the proceeds in such other property or investment, as he may in writing direct, and in like manner, change the investment as often as directed by the said Ellsworth P. Scales.

(b) The trustee is to be entitled to 5% per annum on the income received by it from this trust property, or the proceeds thereof as compensation to it for its services to be deducted by the trustee from the income as received, and from the income is to pay all taxes or or other charges, if any, necessary to the preservation and protection of the trust property, and the net income as and when received to be paid over to Ellsworth P. Scales.

(c) Ellsworth P. Scales may, at any time he sees fit, remove the Title Guarantee Loan & Trust Company from the trusteeship in regard to the property held in trust for him, and appoint a substituted trustee, and in like manner, may remove any trustee as often as he sees fit, and appoint a substituted trustee, such removal to be made by his notifying in writing the trustee of its removal, and in said writing [fol. 16] ing, notify the trustee who he has appointed as a substituted trustee. Upon receiving such notice of removal and appointment of substituted trustee, the Title Guarantee Loan & Trust Company, or any other trustee, shall at once surrender to the substituted trustee all of the property then held by it under this trust for Ellsworth P. Scales.

Any substituted trustee shall take, hold, manage and dispose of the property received by it under this trust under the terms and provisions of this trust in the same manner as the Title Guarantee Loan & Trust Company is to receive, hold, and manage such property, provided, however, that no trustee can be removed until all earned compensation has been paid to it, and until all taxes and other charges, if any, for which the trust is liable, is paid.

(d) At the death of Ellsworth P. Scales, all trust property then belonging to the trust, shall go to the child or children of Ellsworth P. Scales, share and share alike, and as to such of said children as are under the age of twenty-one years, the share shall be delivered to the legal guardian or representative of such minor, provided, however, that Ellsworth P. Scales shall have the power and authority by will to dispose of and direct the disposition of the property

then belonging to and held under this trust, in which event the trustee shall deliver the property as directed by said [fol. 17] will. The distribution and division between the children of Ellsworth P. Scales is only in the event he leaves no will, or makes no disposition of property held under this trust, by will, and in the event Ellsworth P. Scales dies leaving no will and leaves no children or lineal descendants, the trust property, if any, held under this trust at the time of his death, is to go to his legal heirs.

Par. 2. The undersigned, Grace C. Scales, does by these presents grant, sell, transfer, assign and deliver to the Title Guarantee Loan & Trust Company, trustee, fifty (50) bonds issued by the Pratt Consolidated Coal Company numbered fifty-one (51) to one hundred (100), both inclusive, each of said bonds being for One Thousand Dollars, each bearing date as of the first day of April, 1905, each bearing interest at the rate of 5% per annum, payable semi-annually, with coupons due July 1st, 1918, and all subsequent coupons attached, each of said bonds being secured by mortgage or deed of trust referred to in said bonds. These Fifty bonds the Title Guarantee Loan & Trust Company, as trustee, and hereinafter called trustee, is to hold in trust for the use and benefit of Anne S. Benedict, upon the following trusts and conditions, to wit:

(a) The trustee is to hold, manage and look after the said trust property and shall pay over the net income and profits [fol. 18] therefrom to the said Anne S. Benedict during her life, or to whomsoever she may, in writing, direct.

If at any time during the life of the said Anne S. Benedict the income and profits of the trust property received by her from this trust is in her opinion insufficient for her comfortable support and maintenance, she may in writing direct the trustee to sell and dispose of such portion of such property as she sees fit, in which event it shall be the duty of the trustee to sell and dispose of the property as directed in writing, and pay over the amount received therefrom to the said Anne S. Benedict.

The said Anne S. Benedict may at any time that she sees fit, direct the trustee to sell the trust property, or any part thereof for reinvestment, and reinvest the proceeds in such other property, or investment as she may in writing direct, and in like manner change the investment as often as directed by the said Anne S. Benedict,

(b) The trustee is to be entitled to 5% per annum on the income received by it from this trust property, or the proceeds thereof, as compensation to it for its services to be deducted by the trustee from the income as received and from the income is to pay all taxes or other charges, if any, necessary to the preservation and protection of the trust [fol. 19] property, and the net income as and when received is to be paid over to Anne S. Benedict.

(c) Anne S. Benedict may, at any time she sees fit, remove the Title Guarantee Loan & Trust Company from the trusteeship, in regard to the property held in trust for her, and appoint a substituted trustee, and in like manner may remove any trustee as often as she sees fit, and appoint a substituted trustee, such removal to be made by her notifying the trustee in writing of its removal, and in said writing, notify the trustee who she has appointed as a substituted trustee. Upon receiving such notice of removal and appointment of substituted trustee, the Title Guarantee Loan & Trust Company, or any other trustee, shall at once surrender to the substituted trustee all of the property then held by it under this trust for Anne S. Benedict.

Any substituted trustee shall take, hold, manage and dispose of the property received by it under this trust under the terms and provisions of this trust in the same manner as the Title Guarantee Loan & Trust Company is to receive, hold and manage such property, provided, however, that no trustee can be removed until all earned compensation has been paid to it, and until all taxes and other charges, if any, for which the trust is liable, is paid.

[fol. 20] (d) At the death of Anne S. Benedict, all trust property then belonging to the trust shall go to the child or children of Anne S. Benedict, share and share alike, and as to such of said children as are under the age of twenty-one years, the share shall be delivered to the legal guardian or representative of such minor, provided, however, that Anne S. Benedict shall have the power and authority by will to dispose of, and direct the disposition of the property then belonging to and held under this trust, in which event the trustee shall deliver the property as directed by said will. The distribution and division between the children of Anne S. Benedict is only in the event she leaves no will, or makes no disposition of property held under this trust, by will, and in the event Anne S. Benedict dies leaving



no will and leaving no children or lineal descendants, the trust property, if any, held under this trust, at the time of her death, is to go to her legal heirs.

All property and income to which Anne S. Benedict is entitled to under the provisions of this instrument, is to be for her sole and separate use, and free from any rights, interests or control in her present, or any future, husband.

Par. 3. The undersigned, Grace C. Scales, does by these presents grant, sell, transfer, assign and deliver to the Title Guarantee Loan & Trust Company, trustee, the following [fol. 21] stocks and bonds, to wit:

Bonds issued by the Pratt Consolidated Coal Company, numbered one hundred and one (101) to two hundred and thirty-one (231), both inclusive and six hundred and eighty-seven (687) to seven hundred (700), both inclusive, and eight hundred and sixteen (816) and eight hundred and seventeen (817) and thirty-two hundred and thirty-three (3233) to thirty-two hundred and forty-five (3245), both inclusive, and thirty-three hundred and fifty-nine (3359) and thirty-three hundred and seventy-nine (3379) to thirty-three hundred and eighty-seven (3387), both inclusive, and bonds numbered twenty-seven hundred and eighty (2780) to twenty-seven hundred and ninety-one (2791), both inclusive, and bonds numbered seven hundred and one (701) to seven hundred and fifty-eight (758), both inclusive, each of said bonds being for one thousand dollars, each bearing date as of the first day of April 1905, each bearing interest at the rate of 5% per annum, payable semi-annually, with coupons due July 1st, 1918, and all subsequent coupons attached, each of said bonds being secured by mortgage or deed of trust referred to in said bonds.

And Twenty-four bonds issued by Birmingham Railway & Electric Company, each for One Thousand Dollars, each bearing interest at the rate of 5% per annum, payable semi-annually, said bonds being numbered nine hundred and twenty-seven (927) to nine hundred and fifty (950) both inclusive, with coupons due July 1st, 1918, and all subsequent coupons attached.

Also Thirty-four shares of stock, each for One Hundred Dollars, issued by Fulton Mining Company, and evidenced by certificate No. 71.

Also Sixty-three and  $\frac{1}{3}$  ( $63\frac{1}{3}$ ) shares of the capital stock of Empire Mining Company, each share being for One Hundred Dollars, and evidenced by Certificate No. 30.

Also two (2) notes, executed by Empire Mining Company to Grace C. Scales, one for Twenty-Four Hundred and Eighty-Nine and 71/100 (\$2489.71) Dollars, and one for Three Hundred and Forty-seven and 70/100 (\$347.70) Dollars.

Also Nine shares of stock, each for one Hundred Dollars, issued by Ellsworth Ore Company, (Inc.) evidenced by certificate No. 6.

Also twenty shares of stock issued by Birmingham Trust & Savings Company, each for \$100.00 evidenced by certificate No. 1173.

[fol. 23] Also six shares of stock, each for \$100.00 issued by Avondale Mills, evidenced by certificate No. 828.

Also forty one shares of preferred stock issued by Birmingham Railway, Light & Power Company, evidenced by certificate No. 3425.

Also forty-two shares of the capital stock of the Ensley Land Company, thirty-nine shares being evidenced by certificate No. 2499, and three shares being evidenced by certificate No. 2320.

Also fractional shares of stock in the Ensley Land Company to the amount of Twenty (\$20.00) Dollars, evidenced by certificate No. 274, and to the amount of Fifty-five (\$55.00) Dollars evidenced by certificate No. 386, these certificates being certificates of ownership in fractional shares.

One note for Twenty-five Thousand (\$25,000) Dollars, executed by William Hood, and secured by deed of trust, being dated May 1st, 1915, due May 1st, 1920, bearing interest from date at the rate of 6% per annum, payable semi-annually, with coupons due May 1st, 1918, and all subsequent coupons attached.

In trust for the following uses and purposes:

[fol. 24] (a) The Title Guarantee Loan & Trust Company, as trustee shall hold, manage and look after said property, and shall pay over to the undersigned Grace C. Scales, during her life, the net income, rents and profits therefrom, such net income, rents and profits to be paid over to the said Grace C. Scales, as often as received by the Title Guarantee Loan & Trust Company as trustee.

(b) Grace C. Scales reserves, and shall have the right, to dispose of all trust property in the custody of the trustee under paragraph three of her last will and testament, and if she makes disposition by last will and testament, then the



trust property is to be handled and disposed of as directed in said will.

(c) In the event Grace C. Scales makes no disposition of the trust property covered by this paragraph three of her last will and testament, then if D. C. Scales, the husband of Grace C. Scales, is living, the trustee is to pay over from the net income of the trust property, to D. C. Scales, for and during the term of his life, Two Hundred Dollars per month, and the balance of the net income the trustee is to pay over to Ellsworth P. Scales, the son, and Anne S. Benedict, the daughter of Grace C. Scales, during their lives, the child or children of Ellsworth P. Scales, if he be dead, or of Anne S. [fol. 25] Benedict, if she be dead, to receive the share of the income which the parent would have received if living, and subject to the charge on the income in favor of D. C. Scales. One-half of the trust property in the custody of the trustee, under this paragraph of the trust, at the death of Grace C. Scales, is to be transferred to the trust herein created for Ellsworth P. Scales, by paragraph one hereof, with the same powers, rights and duties and to be held under the same provisions and conditions as the trust in favor of Ellsworth P. Scales under Paragraph One hereof.

One-half of the trust property in the custody of the trustee, under this paragraph of the trust, at the death of Grace C. Scales, is to be transferred to the trust herein created for Anne S. Benedict, by paragraph two hereof, with the same powers, rights and duties and to be held under the same provisions and conditions as the trust in favor of Anne S. Benedict under paragraph two hereof.

(d) If at any time during the life of the undersigned Grace C. Scales, the net income and profits of the property coming into the hands of the trustee under paragraph three of this instrument, are in her opinion insufficient for her comfortable support and maintenance, she may, in writing, direct the Title Guarantee Loan & Trust Company, as trustee, to sell and dispose of such portion of the said trust property as she sees fit, in which event, it shall be the duty [fol. 26] of the trustee to sell and dispose of the property as directed, and pay over to her the amount received therefrom.

The said Grace C. Scales may, at any time she sees fit, in writing direct the trustee to transfer and deliver to either Ellsworth P. Scales, or Anne S. Benedict, her children, such

portion of the property in the hands of the trustee under this instrument, as she deems fit, relieved from any trust under this instrument, in which event, it shall be the duty of the trustee to follow the written direction of said Grace C. Scales, and transfer and deliver the property as directed to either of said children.

(e) Grace C. Scales shall have the right in writing to direct the trustee to sell any or all of the property received by it under this instrument, and reinvest the proceeds in other property, and in like manner, direct the trustee to change the investment by selling and reinvesting as often as she deems fit, and it shall be the duty of the trustee to make sales and reinvestments as often as directed by the said Grace C. Scales, all property acquired by any reinvestment to be held under the terms and conditions of the trust created by this paragraph.

Par. 4. In regard to the trust created in favor of Ells-[fol. 27] worth P. Scales, by paragraph one hereof, he may, at any time he sees fit, remove the Title Guarantee Loan & Trust Company from the trusteeship created by paragraph one, and appoint a substituted trustee and in like manner, remove any trustee as often as he sees fit, and appoint a substituted trustee, such removal to be made by notifying the trustee in writing of its removal, and stating the trustee appointed as substituted trustee, and

In like manner, Anne S. Benedict may remove the Title Guarantee Loan & Trust Company, as trustee, and appoint a substituted trustee, and change the trustee as often as desired in regard to the trust created by paragraph two of this instrument, and

In like manner Grace C. Scales may remove the trustee and appoint a substituted trustee as often as she sees fit as regards the trust created by paragraph three of this instrument.

Any substituted trustee as to either of the trusts created by this instrument, shall take, hold, manage and dispose of the property received by it under the terms of the trust as created by this instrument, and upon receiving notice of the removal and appointment of a substituted trustee as to either of the trusts created by this instrument, the Title [fol. 28] Guarantee Loan & Trust Company, or any other Trustee, shall at once surrender to the substituted Trustee, all of the property then held by it under the special trust.

Par. 5. Elsworth P. Scales as to the trust created by Paragraph One, and Anne S. Benedict as to the trust created by Paragraph Two, and Grace C. Scales, as to the trust created by Paragraph Three, shall have the right, at any time, to require the Title Guarantee Loan & Trust Company, or any substituted trustee, to give bond in such amount as he or she may direct, with some guaranty company to be approved by him or her, as surety thereon, the bond to be so conditioned and payable as to guarantee that the trustee will perform all of the obligations imposed upon the trustee by the terms of the trust and faithfully account for and manage the property received by it under the trust, the premium cost and expenses of such bond to be paid out of the income from the trust property, or the trust property in the hands of the trustee.

Par. 6. The Title Guarantee Loan & Trust Company shall receive as full compensation for its services, in the execution of the trust created by Paragraph One hereof, an amount equal to and at the rate of 5% per annum, on the income received by it from the trust estate, and in like manner 5% of the income received by it on the trust estate [fol. 29] created by Paragraph Two, and in like manner 5% of the income received by it from the trust created by Paragraph Three hereof, and any substituted trustee shall receive similar compensation for services unless, at the time of the appointment of a substituted trustee by agreement of the trustee, and the party appointing the amount of the compensation is changed, all compensation to the trustee under the terms of either of the trusts herein created, shall be deducted by the trustee from the income as received.

Par. 7. In the event any litigation shall arise in regard to the trust property during the existence of either of the trusts hereby created, the trustee shall employ such attorney to represent the trust estate as the beneficiaries under the trust may direct, the cost and expense of such litigation to be a charge upon the trust estate in litigation.

Par. 8. The trustee is directed to pay all costs and expense, including tax, if any, that it may be necessary to pay, in order to protect the trust property, and deduct the same from the net income coming in from the property under the trust for which the expenditure is made.

Par. 9. The Title Guarantee Loan & Trust Company hereby accepts the trusts created and imposed by this instrument, and agrees to execute and discharge each of the [fol. 30] trusts in accordance with the terms hereof.

Par. 10. As to the net income which Ellsworth P. Scales is entitled to under the trust created by Paragraph One hereof, the trustee shall, as and when received, deposit the same to his credit in the First National Bank of Birmingham, until directed otherwise by Ellsworth P. Scales.

As to the net income which Anne S. Benedict is entitled to under the trust created by Paragraph Two hereof, the trustee shall, as and when received, deposit the same to her credit in the First National Bank of Birmingham, until directed otherwise by Anne S. Benedict.

In Witness Whereof, the said Grace C. Scales and the Title Guarantee Loan & Trust Company, by its President, E. J. Smyer, who is duly authorized to execute this instrument, hereunto set their signatures and seals, and each of the six preceding pages of this instrument have been identified by Grace C. Scales and E. L. Smith by their writing their names on the margin of each page in quadruplicate, this 29th day of December, 1917.

Grace C. Scales. (L. S.) Title Guarantee Loan & Trust Company, Trustee, by E. J. Smyer (L. S.), President. (Seal.)

[fol. 31] EXHIBIT "B" TO ORIGINAL BILL

This Instrument Witnesseth: That whereas by the provisions of paragraph 3 of a certain trust indenture bearing date December 29, 1917, to which reference is here made, Grace C. Scales, of Nashville, Tennessee, conveyed and delivered to Title Guarantee Loan & Trust Company, of Birmingham, Alabama, as Trustee, certain securities and notes therein fully described (including the two hundred bonds hereinafter referred to) in trust to pay over the net income to her during her life, with certain dispositions over upon her death, but in the event only that she did not otherwise dispose of said trust estate by her last will and testament; and



Whereas, in section (d) of said Paragraph 3 there were reserved to her the right and power, if such income accruing to her should in her opinion be or become insufficient for her comfortable support and maintenance, to call on the Trustee to sell such portion of said trust property as she might see fit, and to turn over the proceeds thereof to her; and

Whereas, in said section (d) of said Paragraph 3 there were further reserved to her the right and power at any time to require the Trustee to deliver to either Ellsworth [fol. 32] P. Scales or Anne S. Benedict, her children, such portion of the trust property as she might see fit, relieved from any trust under said instrument; and

Whereas, the exercise by the said Grace C. Scales of either of said two powers, which were conferred by her on herself to be exercised solely in her discretion, would to that extent diminish the corpus of said trust estate that is to pass after her death to those who may be or become thereunto entitled after her; and

Whereas, for these reasons she wishes now to efface and extinguish the powers given her in said section (d) of Paragraph 3 of said trust indenture in so far as they relate to or can in any wise affect a certain two hundred (200) bonds described in said trust indenture and now held in said trust, or any other property or security into which said two hundred bonds or any part of them may be converted by sale and reinvestment, and her said two children agree and consent that she may do so—the said two hundred (200) bonds being as follows:

Bonds issued by the Pratt Consolidated Coal  
Company numbered viz:

Numbers One Hundred and One (101) to Two Hundred and Thirty-One (231) both inclusive, in all	131
Numbers Seven Hundred and One (701) to Seven Hundred and Fifty-Eight (758), both inclusive, in all	58
[fol. 33] Numbers Eight Hundred and Sixteen (816) and Eight Hundred and Seventeen (817)	2
Numbers Three Thousand Three Hundred and Seventy-nine (3379) to Three Thousand Three Hundred and Eighty-Seven (3387), both inclusive, in all	9
	<hr/> 200

Now, Therefore, the Said Grace C. Scales, in Consideration of the Premises and of the love and affection she has for those who shall become entitled to the benefits of said trust estate after her, hereby releases and relinquishes to said Title Guarantee Loan & Trust Company, Trustee, all of the authority and powers reserved to her in said section (d) of said trust indenture in so far as relates to the above two hundred (200) bonds of Pratt Consolidated Coal Company or any reinvestment of them or any part of them (but not as to any other of the property in said trust), so as to that extent to efface and extinguish said authority and powers and so as that said Trustee will hold and administer said bonds or any reinvestment of them free and discharged from the limitations contained in said section (d); and the said Ellsworth P. Scales and Anne S. Benedict hereby ratify and confirm this instrument and release and relinquish any and all right of benefit they might have in the powers herein extinguished.

The Title Guarantee Loan & Trust Company, of Birmingham, [fol. 34] the Trustee named in the said trust indenture, herewith formally assents to the foregoing modification of said trust, and in evidence of its assent thereto joins in the execution of this instrument.

In Witness Whereof, the said Grace C. Scales, Ellsworth P. Scales, and Anne S. Benedict, and likewise the Title Guarantee Loan & Trust Company, by its President E. J. Smyer, who is duly authorized to execute this instrument, hereunto set their signatures and seals on this the third page of this instrument, and each of the two preceding pages has been identified by Grace C. Scales and by E. L. Smith (Treasurer of said Trust Company), by their writing their names on the margins hereof, in duplicate, this 11th day of January, 1929.

Grace C. Scales, Ellsworth P. Scales, Anne S. Benedict, Title Guarantee Loan & Trust Company, by  
E. J. Smyer, President.

[fol. 35]      EXHIBIT "C" TO ORIGINAL BILL

I, Mrs. Grace C. Scales, of Nashville, Tennessee, being of sound mind and disposing memory, do make and declare



this to be my last will and testament, hereby revoking all former wills by me at any time made.

#### Item One

For the reason that I own property in the State of Tennessee, and that there is property situated in the State of Alabama which I have the right to dispose of my last will and testament, it will be necessary to appoint an executor of this will for each of said states.

Accordingly, I appoint the Nashville Trust Company, a corporation of Nashville, Davidson County, Tennessee, as executor of this will as to all property which I may own in the State of Tennessee at the time of my death; and I appoint the Title Guarantee Loan & Trust Company, a corporation of Birmingham, Alabama, as executor of this will as to all property which I may own in the State of Alabama and also as to all property which I may have the right to dispose of by last will and testament in said state.

#### Item Two

In paragraph three (3) of a trust agreement dated December 29, 1917, executed by and between myself and the said Title Guarantee Loan & Trust Company, Birmingham, Alabama, I conveyed to the said company as trustee certain property to be held upon the uses and trusts set forth in said agreement; and said agreement contains the following provisions:

"Grace C. Scales reserves and shall have the right to dispose of all trust property in the custody of the trustee under paragraph three (3) by her last will and testament, and if she makes disposition by last will and testament, then the trust property is to be held and disposed of as directed in said will."

Now, therefore, desiring to exercise the right to dispose of the said trust property, I do hereby give, devise and bequeath all of the property in custody of said Title Guarantee Loan & Trust Company under the terms of item or paragraph three (3) of said trust agreement at the time of my death to the said company, as trustee, the same to be held by it in trust upon the uses and trusts, terms, conditions, and limitations hereinafter set forth in this item of my will.

Section One. From the said trust property in the hands of the trustee under paragraph three (3) of said trust agreement there shall be set aside property of the value of [fol. 37] One Hundred Thousand (\$100,000.00) Dollars, which shall constitute a trust estate to be held by the said trustee in trust upon the uses and trusts, terms, conditions and limitations hereinafter set forth in this section of my will.

If at the time of my death there shall be in the hands of the said trustee under paragraph three (3) of said trust agreement bonds of the Pratt Consolidated Coal Company, a corporation organized under the laws of the State of Delaware, and having its principal office in Birmingham, Alabama, of the par value of Two Hundred Thousand (\$200,000.00) Dollars, the said trust estate shall be made up of said bonds, the same to be valued at par.

However, if at the time of my death there shall not be in the hands of the said trustee under said paragraph three (3) of said trust agreement bonds of the said Pratt Consolidated Coal Company of the par value of Two Hundred Thousand (\$200,000.00) Dollars, then the said trust estate shall be made up of one-half ( $\frac{1}{2}$ ) of such of said bonds as may be in the hands of the trustee, the same to be valued at par, and the balance of said trust estate shall be made up of such other of the trust property in the hands of the trustee under said paragraph three (3) of said trust agreement as it may determine.

If at the time of my death there shall be no bonds of the said Pratt Consolidated Coal Company in the hands of the trustee under paragraph three (3) of said trust agreement, then the said trust estate shall be made up entirely of such other of the trust property in the hands of the said trustee under said paragraph three (3) of said trust agreement as it shall determine.

[fol. 39] The said trust estate shall be held in trust by the said trustee for my daughter, Mrs. Ann S. Benedict, of Nashville, Tennessee, for and during her life, during which time the entire net income arising therefrom shall be paid over to her, subject however to an annuity of Twenty-five Hundred (\$2500.00) Dollars per year which shall first be paid by the said Trustee out of said net income to my husband, D. C. Scales, for and during his life.

Upon the death of my said daughter, Mrs. Ann S. Benedict, the said trust property shall continue to be held in

trust by the said trustee for such of her children as are then living, share and share alike, the share of each such child to be held in trust for him or her for and during his or her life, during which time the entire net income arising therefrom shall be paid to him or her, except that during the minority of any child the income arising from his or her share shall be used by the trustee for his or her maintenance, education, and support; provided, however, that the lineal descendants of any deceased child of the said Mrs. Ann S. Benedict, living at her death, shall take the share per stirpes their parent would have taken if living at her death, the portion of each such lineal descendant to be held in trust by the said trustee for and during his or her life; during which time the entire net income arising therefrom shall be paid over to him or her, except that during the minority of any [fol. 40] such lineal descendant the said net income shall be used by the trustee for his or her maintenance, education, and support; provided, further, however, that if my husband, D. C. Scales, shall be living at the time of the death of my said daughter, then and in that event the said trustee shall continue to pay to him for and during his life the sum of Twenty-five Hundred (\$2500.00) Dollars per year; provided, further, however, that if Andrew B. Benedict, the husband of my said daughter, shall be living at the time of her death, then and in that event the said trustee shall pay to him for and during his life one-fourth ( $\frac{1}{4}$ ) of the entire net income arising from said trust property.

For and during the continuation of this trust as to all or any part of said trust property the said trustee shall hold, manage, and control the same, and collect and receive the income arising therefrom.

For and during the continuation of this trust as to all or any part of said trust property the said trustee may sell all or any part of the same and reinvest the proceeds of sale, such sales and reinvestments to be made when and in the manner and upon such terms as it may deem best, provided, that the same shall be done only with the written consent of my said daughter, Mrs. Ann S. Benedict, for and during [fol. 41] her life.

My intention and purpose in creating the said trusts is to provide a certain and sure income for the maintenance and support of all beneficiaries therein named, and of each of them; and each and every of the said beneficiaries shall have no power to anticipate, mortgage, assign, sell, or in

any way alienate either the corpus of the estate held in trust for them or any of them, or the income arising therefrom, during the continuation of the trust; and neither the said trust property, nor any part thereof, either corpus or income, while the same is held in trust by the trustee for the said beneficiaries, or any of them, shall be subject to execution, or other legal process for any debt or liability any one or all of said beneficiaries may contract or incur; and the interest of each and every female beneficiary shall be held for her sole and separate *sue*, free from the debts, contracts, control and all marital rights of any husband she may ever at any time have.

Section Two. From the said trust property in the hands of the Trustee under paragraph three (3) of said trust agreement there shall be set aside property of the value of One Hundred Thousand (\$100,000) Dollars, which shall constitute a trust estate to be held by the said trustee in trust upon the uses and trusts, terms, conditions, and limitations hereinafter set forth in this section of my will.

If at the time of my death there shall be in the hands of the said trustee under paragraph three (3) of said trust agreement bonds of the Pratt Consolidated Coal Company, a corporation organized under the laws of the State of Delaware, and having its principal office in Birmingham, Alabama, of the par value of Two Hundred Thousand (\$200,000) Dollars, the said trust estate shall be made up of said bonds, the same to be valued at par.

However, if at the time of my death there shall not be in the hands of the said trustee under said paragraph three (3) of said trust agreement bonds of the said Pratt Consolidated Coal Company of the par value of Two Hundred Thousand (\$200,000) Dollars, then the said trust estate shall be made up of one-half ( $\frac{1}{2}$ ) of such of said bonds as may be in the hands of the trustee, the same to be valued at par, and the balance of said trust estate shall be made up of such other of the trust property in the hands of the trustee under said paragraph three (3) of said trust agreement as it may determine.

If at the time of my death there shall be no bonds of the said Pratt Consolidated Coal Company in the hands of the [fol. 43] trustee under paragraph three (3) of said trust agreement, then the said trust estate shall be made up en-



tirely of such other of the trust property in the hands of the said trustee under said paragraph three (3) of said trust agreement as it shall determine.

The said trust estate shall be held in trust by the said trustee for my son Ellsworth P. Scales, of Nashville, Tennessee, for and during his life, during which time the entire net income arising therefrom shall be paid over to him, subject however to an annuity of Twenty-five Hundred (\$2500) Dollars per year which shall first be paid by the said trustee out of said net income to my husband, D. C. Scales, for and during his life.

Upon the death of my said son, Ellsworth P. Scales, the said trust property shall continue to be held in trust by the said trustee for such of his children as are then living, share and share alike, and share of each such child to be held in trust for him or her and during his or her life, during which time the entire net income arising therefrom shall be paid to him or her, except that during the minority of any child the income arising from his or her share shall be used by the trustee for his or her maintenance, education, and support; provided, however, that the lineal descendants of any deceased child of the said Ellsworth P. Scales, living at his death, shall take the share per stirpes their parent would have taken if living at his death, the portion of each such lineal descendant to be held in trust by the said trustee for and during his or her life, during which time the entire net income arising therefrom shall be paid over to him or her, except that during the minority of any such lineal descendant the said net income shall be used by the trustee for his or her maintenance, education, and support; provided, further, however, that if my husband, D. C. Scales, shall be living at the time of the death of my said son, then, and in that event the said trustee shall continue to pay to him for and during his life the sum of Twenty Five Hundred (\$2500) Dollars per year; provided, further, however, that, if Margaret Scales, the wife of my said son, shall be living at the time of his death, then and in that event the said trustee shall pay to her for and during her life one-fourth ( $\frac{1}{4}$ ) of the entire net income arising from said trust property.

For and during the continuation of this trust as to all or any part of said trust property, the said trustee shall hold, manage, and control the same, and collect and receive the income arising therefrom.

For and during the continuation of this trust as to all [fol. 45] or any part of said trust property the said trustee shall hold, manage and control the same, and collect and receive the income arising therefrom.

For and during the continuation of this trust as to all or any part of said trust property the said trustee may sell all or any part of the same and reinvest the proceeds of sale, such sales and reinvestments to be made when and in the manner and upon such terms as it may deem best, provided that the same shall be done only with the written consent of my said son, Ellsworth P. Scales, for and during his life.

My intention and purpose in creating the said trusts is to provide a certain and sure income for the maintenance and support of all beneficiaries therein named, and of each of them; and each and every of the said beneficiaries shall have no power to anticipate, mortgage, assign, sell or in any way alienate either the corpus of the estate held in trust for them or any of them, or the income arising therefrom, during the continuation of the trust, and neither the said property, nor any part thereof, either corpus or income, while the same is held in trust by the trustee for the said beneficiaries, or any of them, shall be subject to execution, or other legal process for any debt or liability any one or all of said beneficiaries may contract or incur; and the interest of each and every female beneficiary shall be held for her sole and separate use, free from the debts, contracts, control and all marital rights of any husband she may ever at any time have.

Section Three. After the trust property of the value of One [fol. 46] Hundred Thousand (\$100,000) Dollars shall be set aside as provided above in Section One, and after the trust property of the value of One Hundred Thousand (\$100,000) Dollars shall have been set aside as above provided in Section Two, the balance of said trust property in the hands of the said trustee under paragraph three (3) of said agreement at the time of my death shall be paid and delivered in equal shares to my said daughter, Mrs. Ann S. Benedict, and to my said son, Ellsworth P. Scales, to be theirs absolutely.

Item Three. My Tennessee Executor shall pay all administration expenses and debts on account of property.



situated in Tennessee out of the assets coming into its hands.

My intention is, to give to the Old Woman's Home, of Nashville, Tennessee, the sum of Three Thousand (\$3000) Dollars, however, if I shall fail to do so before my death, I give to the Old Woman's Home out of my Tennessee assets the sum of Three Thousand (\$3000) Dollars, or such part of said sum as I shall fail to give during my life.

All the rest and residue of the property which I may own in Tennessee at the time of my death, real, personal and mixed, I give in equal shares of one-half each to my daughter, [fol. 47] Mrs. Ann S. Benedict, and to my son, Ellsworth P. Scales; provided, however, that my said Tennessee executor is authorized and empowered, before making a division of said property between my said two children, to sell all or any part of the same, either real or personal or both, and to divide the proceeds equally between my said two children, if it in its judgment deems it best to do so.

Item Four. I give, devise, and bequeath unto my said daughter, Mrs. Ann S. Benedict, and to my said son, Ellsworth P. Scales, in equal shares of one-half ( $\frac{1}{2}$ ) each, any other property situated in the State of Alabama which I may own at the time of my death, and which I have not hereinabove in this will already disposed of; provided, however, that my said Alabama executor is authorized and empowered, before making a division of my said property between my said two children, to sell or any part of the same, either real or personal or both, and to divide the proceeds equally between my said two children, if it in its judgment deems it best to do so.

In Witness Whereof, I have executed this as my last will and testament this January 1, day of —, 1926.

(Signed) Mrs. Grace C. Scales.

Signed by the said Mrs. Grace C. Scales as and for her [fol. 48] last will and testament in the presence of us, the undersigned, who, at her request, and in her sight and presence, and in the presence of each other have hereunto signed our names as attesting witnesses this 1st day of January 1926.

(Signed) L. A. Anderson. A. T. Jones.

[fol. 49] I, Grace C. Scales, of Nashville, Tennessee, make this as a first codicil to my last will and testament dated January 1, 1926.

Item I. In Item Two, Section 1, of my will I created a trust for the benefit of my daughter, Mrs. Anne S. Benedict, to pay over the income to her during her life, and on her death the income to be paid over to her children or descendants of her children per stirpes. It is my purpose, and I now direct, that said trust for my daughter Anne shall continue until twenty-one years after the death of the last survivor of her lineal descendants living at my death (during which period the income from said trust after her death shall be paid to or for the benefit of her lineal descendants per stirpes) at which time said trust shall terminate and the corpus thereof shall vest in her lineal descendants then living per stirpes.

Item II. In Item Two, Section Two, of my will I created a trust for the benefit of my son, Ellsworth P. Scales, to pay over the income to him during his life, and on his death the income to be paid over to his children or descendants of children per stirpes. It is my purpose, and I now direct, that said trust for my son Ellsworth shall continue until twenty-one years after the death of the latest survivor of his lineal descendants living at my death (during which [fol. 50] period the income from said trust after his death shall be paid over to or for the benefit of his lineal descendants per stirpes) at which time said trust shall terminate and the corpus thereof shall vest in his lineal descendants then living per stirpes.

Item III. I hereby cancel and revoke Section Three of Item Two of my said will dated January 1, 1926, and substituted in lieu thereof the following: After the trust property of the value of Two Hundred Thousand (\$200,000) Dollars in the aggregate shall be set aside as provided in Section One and Two of Item Two of my original will, the residue of said trust property in the hands of the said Trustee under Paragraph Three of said trust agreement at the time of my death shall be disposed of as follows:

(a) There shall be set aside out of said residue the sum or value of Thirteen Thousand (\$13,000.00) Dollars to be held and disposed of as set out in Item IV below; and

(b) The sum of Sixteen Thousand shall next out of said residue be paid over to my daughter, Anne, in order to equalize her with a like amount theretofore in my lifetime advanced by me to my son, Ellsworth; and

[fol. 51] (c) What then remains of said residue shall be divided into two equal parts, of which one-half shall be paid over to my daughter, Anne, and the other one-half to my son, Ellsworth, the payments to my daughter and son in (b) and (c) hereof to be theirs absolutely.

Item IV. I give to the Title Guarantee Loan & Trust Company, of Birmingham, Alabama, the said sum or value of Thirteen Thousand (\$13,000.00) Dollars referred to in the preceding item in trust for the maintenance and education of my grand-daughter, Margaret Walton Scales. The Trustee shall invest said fund to produce an income and may change the investments at any time in its direction. The Trustee is particularly charged with seeing that my said grand-daughter shall have a proper education, and for this purpose and also for her maintenance the Trustee shall be at full liberty in its discretion to expend said sum, principal as well as interest, but its expenditure shall be only to pay such debts and accounts as the Trustee has itself expressly authorized. Said trust shall end when my said grand-daughter becomes twenty-one years of age, at which time any residue of said fund shall, if she is living, be turned over to her to be hers absolutely. If she should die before she reaches twenty-one the trust shall then terminate and any residue of said trust fund shall thereupon go to my son, Ellsworth P. Scales, if he is then living, to be his absolutely, and, if he should be dead, shall be disposed of as provided with respect to my residuary estate.

Item V. I herewith add after the second paragraph of Item Three of my original will the following provisions: If Reynolds C. Winston (c) be living and be in my employ at the time of my death, then and in that event I give to him the sum of One Thousand (\$1000.00) Dollars.

In all other respects I ratify and reaffirm my said will of January 1, 1926.

In Witness Whereof I have executed this as a First Codicil to my last will and testament, consisting of three typewritten

pages, in the left-hand margin of each of which I have signed my name and the date hereof, viz, May 21, 1931.

(Signed) Mrs. Grace C. Scales.

Signed by the said Grace C. Scales as and for a *docicil* to her last will and testament, in the presence of us, the undersigned, who at her request and in her sight and presence, and in the presence of one another, have signed our names hereto as attesting witnesses, this 21st day of May, 1931.

(Signed) W. V. Flowers. Kate Killebrew.

[fol. 53] I, Grace C. Scales, of Nashville, Tennessee, having heretofore executed my last will and testament which bears date of January 1, 1926, and a codicil thereto which bears date of May 21, 1931, do ~~make~~ and declare this to be a second and further codicil thereto, to wit:

In my said will I appointed as Executor thereof, as to all property which I might own within the State of Tennessee, the Nashville Trust Company, a corporation existing at the date of my said will, which corporation is hereinafter referred to as the old Nashville Trust Company.

On May 22, 1933, subsequent to the execution of my said will, and said codicil thereto, a new corporation was chartered by the State of Tennessee bearing the name Nashville Trust Company, which corporation is hereinafter referred to as the New Nashville Trust Company.

I revoke the appointment of said old Nashville Trust Company as Executor of my said will as to all property which I may own at the time of my death within the State of Tennessee, and appoint in its place and stead as such Executor said new Nashville Trust Company.

I further direct that wherever the name of said old Nashville Trust Company appears in my said will, or in said [fol. 54] codicil thereto dated May 21, 1931, said new Nashville Trust Company shall be substituted therefor; and I hereby vest in said new Nashville Trust Company all the rights and powers given under my said will to said old Nashville Trust Company.

I direct this codicil to be attached to and become a part of my said will to all intents and purposes.

In Witness Whereof, I have signed my name hereto this the 18th day of April, 1934.

(Signed) Grace C. Scales.



Signed by the said Grace C. Scales as and for a second codicil to her last will and testament, in the presence of us, the undersigned, who, at her request, and in her sight and presence, and in the presence of each other, have subscribed our names hereto as attesting witnesses, this the 18th day of April, 1934.

(Signed) Kate Killebrew, Witness. (Signed) John W. Barton, Witness.

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[fol. 55] IN CHANCERY COURT OF DAVIDSON COUNTY

SUBPOENA—Issued February 9, 1938

State of Tennessee to the Sheriff of Davidson County, Greeting:

We command you to summon Walter Stokes, Jr., Commissioner of Finance and Taxation of the State of Tennessee—if to be found in your County, to appear before the Chancellor of Part One of our Chancery Court at Nashville, on the first Monday in March 1938, it being the seventh day of March 1938, there and then to answer the Original Bill of Complaint of Nashville Trust Company, et al., Extrs. of estate of Mrs. Grace C. Scales, deceased, vs. Walter Stokes, Jr., Commissioner of Finance and Taxation, et al., and further do and receive what our said Court shall consider in that behalf; and this you shall in nowise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness, Joseph R. West, Clerk and Master of our said Chancery Court, at office, in the Court House at the City of Nashville, Tennessee, this first Monday in October 1937, and the 162nd year of American Independence.

Joseph R. West, Clerk and Master, by C. H. Swann,  
D. C. & M.

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[fol. 56]

SHERIFF'S RETURN

Came to hand same day issued and executed by reading the within process to Chas. C. Gilbert, Jr., Asst. Taxation Commissioner. Chas. C. Gilbert, Jr. also accepted service

for Walter Stokes, Jr., Commissioner of Finance & Taxation. Delivered copy of bill to Chas. C. Gilbert, Jr.

This February 14, 1938.

Léon Taylor, Coroner, by Maurice Wise, C. D.

“Service of the within process is hereby accepted this 14th day of February 1938.

Walter Stokes, Jr., by Chas. C. Gilbert, Jr.

[fol. 57] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

ANSWER AND CROSS-BILL—Filed March 17, 1938, as Answer;  
Filed as a Cross-Bill April 26, 1938

Now come the defendants, Henry S. Long, Chairman, and John P. Kohn, Sr., and W. W. Ramsey, associates, members of and comprising the State Tax Commission of the State of Alabama, and make answer to the bill of complaint heretofore filed against them and Walter Stokes, Jr., as Commissioner of Finance and Taxation of the State of Tennessee as follows:

[fol. 58]

I

These defendants admit the allegations of fact contained in paragraph 1 of the bill of complaint. Further answering said paragraph of said bill, these respondents aver and show to the Court that by Article XII, Chapter 2, of the General Revenue Act of the State of Alabama, approved July 10, 1935 (Acts 1935, pp. 434-441), there was levied and imposed upon all net estates passing by will, devise or under the intestate laws of the State of Alabama or otherwise, which are lawfully subject to the imposition of an estate tax by the State of Alabama, a tax equal to the full amount of the tax permissible when levied by and paid to the State of Alabama as a credit or deduction in computing any Federal estate tax payable by such estate according to the Act of Congress in effect on the day of the death of the decedent, taxing such estate, with respect to the items subject to taxation in Alabama; that by Section 347.17 of said act of the Legislature of Alabama it was provided that:

“The administration of this chapter is vested in and shall be exercised by the State Tax Commission which shall

prescribe the forms and reasonable rules of procedure in conformity with this chapter for making returns and for [fol. 59] ascertainment, assessment and collection of the taxes imposed hereunder."

## II

These defendants admit the allegations of fact contained in the second paragraph of said bill of complaint and the correctness of the exhibit of said paragraph of said bill.

## III

These defendants admit the allegations of fact contained in the third paragraph of said bill of complaint and the correctness of the exhibit to said paragraph of said bill.

## IV

These defendants admit the allegations of fact contained in the fourth paragraph of said bill of complaint and the correctness of the exhibit to said paragraph of said bill.

## V

These defendants admit the allegations of fact contained [fol. 60] in the fifth paragraph of said bill of complaint.

## VI

Answering paragraph VI of said bill of complaint, these defendants admit that they, acting in their official capacity as the State Tax Commission of the State of Alabama, have heretofore and on, to wit, the 11th day of October 1937, levied and assessed an estate tax under said act of the Legislature of Alabama approved July 7, 1931, upon that portion of the estate of Mrs. Grace C. Scales which was in the State of Alabama, under the circumstances hereinafter set forth in detail, at the time of her death, said property and the value thereof at the date of the death of Mrs. Scales, as estimated by Nashville Trust Company, executor, by return filed with the Internal Revenue Service of the Treasury Department of the United States, being as follows:

\$240,000 Pratt Consolidated Coal Company 5% Bonds @ 85	\$204,000.00
\$1,000 6% First Mortgage Note signed Grazia Graffeo	1,000.00

\$2,500.00 First Mortgage Note signed B. P. Beard .....	2,500.00
63 $\frac{1}{3}$ shares Empire Mining Company common stock, par value \$100 @ \$215 .....	13,616.67
9 shares Ellsworth Ore Company common stock, par value \$100, @ \$700 .....	6,300.00
[fol. 61] 34 shares Fulton Mining Company common stock, par value \$100 @ 60 .....	2,040.00

A copy of said assessment as so fixed by the State Tax Commission of Alabama and as served upon Nashville Trust Company, as executor of the estate of Mrs. Grace C. Scales, is hereto attached as Exhibit A and made a part hereof.

Furthering answering said paragraph of said bill of complaint, these defendants respectfully show to the Court, that, as shown by Exhibit 1 to the bill of complaint herein, the said bonds of the Pratt Consolidated Coal Company and the shares of stock in the Empire Mining Company, the Ellsworth Ore Company and Fulton Mining Company constituted a part of the corpus of the trust established by the said Grace C. Scales by paragraph 3 of said trust instrument dated December 29, 1917, and the remaining items of the assets hereinabove set forth as being in the State of Alabama at the time of the death of the said Grace C. Scales represented reinvestments made by the Title Guarantee Loan & Trust Company of Birmingham, Alabama, as trustee under said trust instrument, in strict accordance with the terms thereof and as representing substitution of other assets originally delivered to said trustee in accordance with said trust instrument of December 29, 1917.

[fol. 62] These defendants further show to the Court that the Pratt Consolidated Coal Company was a corporation under the laws of the State of Alabama, and in the year 1905 issued a series of 5% first mortgage bonds, due in the year 1955, secured by a mortgage to the Title Guarantee Loan & Trust Company of Birmingham, Alabama, as Trustee, on about 70,000 acres of coal lands in the State of Alabama. That said Empire Mining Company, Ellsworth Ore Company and Fulton Mining Company were and are corporations engaged in mining in the State of Alabama and not elsewhere.

Further answering said paragraph of said bill of complaint, these defendants show to the Court that said Pratt Consolidated Coal Company bonds and the common stock in said Empire Mining Company, Ellsworth Ore Company



and Fulton Mining Company were bequeathed to the said Grace C. Scales as one of the residuary legatees under the last will and testament of her brother, T. T. Hillman, who formerly lived in Jefferson County, Alabama, and was one of the organizers or large stockholders in said four corporations.

That said Pratt Consolidated Coal Company bonds and the certificates of stock in said three corporations named above, originally the property of the said T. T. Hillman, upon the death of the said T. T. Hillman in the year 1905 were bequeathed by him to the Title Guarantee Loan & Trust Com-[fol. 63] pany, of Birmingham, Alabama, to be held in trust for his wife, Mrs. T. T. Hillman, during her lifetime, with instructions to deliver said securities upon her death to his sister, the said Mrs. Grace C. Scales.

These defendants are advised and, therefore, aver that the said Mrs. T. T. Hillman died during the year 1917, and immediately thereafter and as soon as title thereto had vested in her by reason of the death of the said Mrs. T. T. Hillman, the said Mrs. Grace C. Scales, without ever obtaining physical possession of said securities, and without ever removing them from the custody of the said Title Guarantee Loan & Trust Company or from the State of Alabama, conveyed the said bonds and shares of stock in trust to the Title Guarantee Loan & Trust Company by the instrument of December 29, 1917, which is made Exhibit A to complainant's bill; and these defendants further aver that said securities have never been physically within the State of Tennessee.

These defendants aver that said bonds and shares of stock have at all time since the death of the said T. T. Hillman in 1905 been physically within the State of Alabama and in the custody of the said Title Guarantee Loan & Trust Company of Birmingham, as Executor and as Trustee under the will of the said T. T. Hillman; later as Trustee under the trust instrument of December 29, 1917; and later as [fol. 64] Executor and as Trustee under the will of Mrs. Grace C. Scales, deceased.

These defendants further aver that at all times since the death of the said T. T. Hillman in the year 1905, and particularly since the execution of the trust instrument of December 29, 1917, said bonds and shares of stock described above have been physically held, preserved and protected by the said Title Guarantee Loan & Trust Company within the State of Alabama, and have there been employed and used

by the said Trust Company for the purpose of producing income.

Respondents are advised and believe and upon such advice and belief respectfully show unto the Court that said assets of said trust hereinabove specifically described in this paragraph had acquired a business situs or "a situs analogous to that of tangible personal property" within the State of Alabama so that the same were subject to a death duty to but one state upon the death of the said Grace C. Scales, whether the same be what is generally denominated a succession tax, an estate tax, or an inheritance tax, and that said property is subject to the estate tax imposed by the laws of the State of Alabama and to the succession, inheritance or estate tax of no other state.

Respondents further show unto the Court that to construe [fol. 65] the inheritance tax law of the State of Tennessee, imposing a charge upon transfers of all intangible property of a decedent, as applying to the bonds, stocks and other assets hereinabove described which had acquired a business situs in the State of Alabama, as hereinabove set forth, would be to take the property of the estate of said Grace C. Scales now in the possession of complainant, Title Guarantee Loan & Trust Company, as executor and as trustee under her will, without due process of law, in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

These respondents are not informed as to whether the defendant, Walter Stokes, Jr., acting in his official capacity as Commissioner of Finance and Taxation of the State of Tennessee, has claimed for the State of Tennessee a state inheritance tax or death transfer tax upon the whole of Mrs. Scales' estate, including that portion assessed by the State of Alabama, but if such averment in said paragraph of said bill be correct, then these respondents aver that the State of Tennessee is not entitled to any estate or inheritance tax calculated or based upon the value of the said assets in the State of Alabama held by said Birmingham Title Guarantee Loan & Trust Company as executor or as trustee, as hereinabove specifically set forth and described, for the reason that to permit the State of Tennessee to [fol. 66] levy and collect a state inheritance tax upon said property would be to subject same to double taxation, in violation of Section 1 of the 14th Amendment to the Constitu-

tion of the United States, providing that no state shall deprive any person of property without due process of law.

## VII

These respondents admit that the complainants should not be compelled to pay inheritance taxes or death transfer taxes upon the same portions of Mrs. Scales' estate to both Tennessee and Alabama and that such taxation would be in violation of the 14th Amendment to the Constitution of the United States and, as herein specifically set forth, these respondents aver that only the State of Alabama is authorized to levy and collect an estate tax upon the portion of said estate located within the territorial jurisdiction of the State of Alabama as hereinabove specifically set forth.

These complainants admit that they appear voluntarily in this cause to invoke the jurisdiction of this Honorable Court for the purpose of having the rights of the State of Alabama adjudicated in this proceeding, and aver that such voluntary appearance has been made with the consent and approval of the Governor and of the Attorney-General of Alabama, as required by the statutes of said state in such [fol. 67] cases made and provided.

## VIII

For further answer to said bill of complaint and by way of cross-bill, these defendants respectfully pray this Honorable Court to take jurisdiction of the subject matter of this litigation and upon a hearing to make and enter a decree in favor of the State of Alabama and against Title Guarantee Loan & Trust Company, as executor of the estate of Mrs. Grace C. Scales, deceased, in the State of Alabama, for the sum of, to wit, \$2202.42, with interest from the 4th day of February, 1938, to date of payment at the rate of six (6%) per cent per annum.

And if mistaken in the relief herein specifically prayed, these respondents and cross-complainants pray for such other, further and general relief as to which they may be entitled in the premises.

Respectfully submitted, The State Tax Commission of Alabama, Henry S. Long, Chairman. John P. Kohn, Associate. W. W. Ramsey, Associate, Members of and Comprising the State Tax Commission [fol. 68] of the State of Alabama. H. F. Crenshaw, Solicitor for Respondents and cross-Complainants.

I will be security for costs: A. B. Benedict.

[fol. 69]

## EXHIBIT "A"

STATE OF ALABAMA,  
The State Tax Commission,  
Montgomery

October 11, 1937.

Nashville Trust Company, Executor, Estate of Mrs. Grace C.  
Scales, Nashville, Tennessee.

DEAR SIRs:

Attention Mr. A. D. Reed, Assistant Trust Officer

Receipt is acknowledged of your letter of July 28th, together with estate tax return, copies of two trust agreements and copy of will in connection with estate of Mrs. Grace C. Scales, who died November 4, 1936, a resident of Nashville, Tennessee.

According to the trust agreement and will of Mrs. Scales, certain property as returned under schedule "B" is covered by the trust agreement and disposed of by her will, the said property having been in Alabama for a great many years.

[fol. 70] We find by the returned filed, gross value of the estate, \$266,058.52.

Returned value of trust property in Alabama, \$229,456.67.  
Equal 86.2429%.

The return as filed shows a net estate under Federal Acts of 1926 of \$156,406.26.

Producing estate tax under Federal Acts of 1926, \$3,192.18.  
Reduced to 80%, \$2,553.75.

Alabama proportion 86.2429%.

Alabama estate tax \$2,202.42.

which is due and payable on or before the expiration of fifteen months from date of death of decedent, namely February 4, 1938, interest will accrue from February 4, 1938 to date of payment, at rate of 6%.

Yours very truly, State Tax Commission, by H. T.  
Knight, Chief Clerk, Estate Tax Department.

K/a.

Copy.



[fol. 71] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

ANSWER OF DEFENDANT, WALTER STOKES, JR.—Filed April  
20, 1938

The defendant Walter Stokes, Jr., Commissioner of Finance and Taxation of the State of Tennessee, for separate answer to the bill filed against him and others in the above styled cause, says:

I

This defendant admits the averments of fact in paragraph I of the bill and admits that the complainants are entitled to a declaration under Sections 8835 to 8847 inclusive, of the Code of Tennessee.

II, III, IV, and V

This defendant admits the averments of fact contained in [fol. 72] paragraphs II, III, IV, and V of complainants' bill and the correctness of the exhibits to the said paragraphs of said bill.

VI

The defendant admits that acting in his official capacity as Commissioner of Finance and Taxation of the State of Tennessee he has claimed for the State of Tennessee a State inheritance tax upon the whole of Mrs. Scales' estate, including that portion assessed by the State of Alabama. Such claim has been made under Section 1259 of the Code of Tennessee, which purports to impose an inheritance tax when the transfer is from a resident of this State upon "all intangible personal property."

Defendant admits upon information and belief that the taxing officers of the State of Alabama are also demanding an estate tax or transfer tax upon those intangibles which constituted a portion of Mrs. Scales' estate found at the time of her death in the State of Alabama, but the defendant is advised and, therefore avers that the State of Alabama has no lawful right under the Constitution of the United States to collect such tax.

[fol. 73]

## VII

This defendant admits upon information and belief the averments of fact contained in paragraph VII of complainants' bill. The defendant admits that the complainants ought not to be required to pay inheritance taxes or estate taxes upon the same portion of Mrs. Scales' estate to both Tennessee and Alabama and that such taxation by both states would be in violation of the Fourteenth Amendment to the Constitution of the United States. The defendant avers that the situs of intangible property for the purpose of succession or inheritance taxes, generally speaking, is the domicile of the decedent at the time of death. There is a possible exception to this general rule with respect to the situs of intangibles for the purpose of inheritance taxes where such intangibles have been so used in a state other than that of the decedent's domicile as to give them a situs analogous to the actual situs of tangible personal property. Defendant avers that the mere fact that a resident of Tennessee has established a trust estate consisting of intangible property with the settlor having the present right to the enjoyment of the income from the trust fund and the power to remove the trust securities at any time into another State does not give such securities a business situs within the State of the residence of the trustee.

Further answering, the defendant avers that the intangible property in Alabama belonging to Mrs. Scales, a deceased resident of Tennessee, which property is more particularly described in the bill of complaint, ought to be declared subject to the inheritance tax of Tennessee and not liable for an inheritance tax or succession tax by the State of Alabama.

And now having fully answered, this defendant prays a declaration and decree of the Court holding subject to the inheritance or succession tax of Tennessee the intangible property held by a trustee in Alabama for the benefit of Mrs. Scales, the settlor, a resident of Tennessee, during her lifetime, subject to the provision that Mrs. Scales might at any time remove such securities from Alabama by the selection of a trustee residing elsewhere, and to be disposed of at her death as she should direct by will.

Walter Stokes, Jr., Commissioner of Finance and Taxation. Roy H. Beeler, Attorney-General. Edwin F. Hunt, Assistant Attorney-General. Dudley Porter, Jr., Field Attorney.

[fol. 75] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

AMENDMENT TO ANSWER OF HENRY S. LONG, ETC., ET AL.—  
Filed April 26, 1938

Now come the defendants, Henry S. Long, Chairman, and John P. Kohn, Sr., and W. W. Ramsey, Associates, Members comprising the State Tax Commission of the State of Alabama, and by leave of the Court first had and obtained, amend their answer heretofore filed in said cause in the manner following:

Amend Paragraph VI of said answer by adding thereto the following:

That as fully appears from the trust indenture between Mrs. Grace C. Scales and the Title Guarantee Loan & Trust Company, dated January 11th, 1929, attached as Exhibit A to the bill, as modified by Exhibit B to said bill, the title, possession and control of the securities, the subject matter of the trust, passed completely to complainant, Title Guarantee Loan and Trust Company, and that such was the [fol. 76] status of the Securities at the time of the death of the said Mrs. Grace C. Scales. And these respondents aver and show to the Court that the said Grace C. Scales did not during her life, nor had Ellsworth P. Scales, Anne S. Benedict, or either of them, prior to her death, exercised the right to "remove the Title Guarantee Loan & Trust Company, as trustee and appoint a substituted trustee," and the respondents aver and show to the Court that even had said original trustee although he or it might have been a non-resident of Alabama would not have had any right to remove the assets of said trust estate to another state except by getting an order from the Circuit Court in Alabama, in compliance with the statutes of Alabama, which said statutes are in words and figures as follows, the same being a correct copy of Article 4, of Chapter 352, of the current Code of Alabama:

"Article 4

"Removal of Trust Estate to Another State

"10418. (6081) (4179) (3560) (3744) Removal of trust estate.—The circuit court of the county in which a trust resides or in which a trust estate is created, or is being

administered, may authorize the removal of such estate to another state.

[fol. 77] "10419. (6082) (4180) (3561) (3745) Mode of obtaining authority for removal.—A cestue que trust or a trustee may obtain authority for the removal of a trust, by petition verified by affidavit, which must state the property to be removed, the place to which removal is desired, the names and residences of the parties having interest therein, which of them, if any, are minors, or of unsound mind, and the facts which show that the removal will be of benefit to the cestue que trust.

"10420. (6083) (4181) (3562) (3745) Hearing: notice.—On the filing of the petition, the register must appoint a day for the hearing thereof, of which notice for at least ten days must be given the parties residing within this state, by the service of summons. If any of such parties be minors or of unsound mind, summons must be served on their guardian, if any they have, or if they have no guardian, upon such person as may have charge of them, or with whom they reside. If any such parties reside without the state, notice must be given them by publication, in the mode, and for the length of time prescribed by the circuit judge. After notice given, the register or judge must appoint a suitable person as guardian ad litem to represent and defend for the minor or parties of unsound mind.

[fol. 78] "10421. (6084) (4182) (3563) (3746) Decree on hearing.—If, on the hearing, the Court is satisfied from the evidence adduced, which may be oral or by deposition, that a removal would be to the interest of the cestue que trust, a decree must be rendered authorizing it. Before the execution of the decree, the party or parties, at whose instance the removal is to be made, must, in the state to which the property is to be removed, before a court having jurisdiction, give bond with sufficient surety, to be approved by such court, in penalty and with condition that will fully protect all parties in interest from loss or injury by reason of the removal, or because of the waste or negligence of the party or parties to whose care and custody such property is instructed; which bond must be properly certified, and filed in the circuit court, and must, before removal, be approved by the circuit judge."

A. H. Carmichael, Attorney-General of Alabama.  
Ray Rushton, Attorney for Defendants Henry S.  
Long, et al.



[fol. 79] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

STIPULATION AS TO FACTS—Filed April 26, 1938

In the above stated cause it is agreed:

That the facts stated in the original bill and the facts stated in the answers of all the respondents, as last amended, are true as stated.

O. K. for entry:

Chas. C. Trabue, Jr., Trabue, Hume & Armistead, Solicitors for Complainants. Edwin F. Hunt, Dudley Porter, Jr., for Defendant Stokes, Commissioner. A. H. Carmichael, Ray Rushton, Attorneys for Defendants, Henry S. Long et al., Comprising Alabama State Tax Commission.

[fol. 80] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER GRANTING LEAVE TO FILE AMENDED AND SUPPLEMENTAL ANSWER—April 27, 1938

In this cause on April 26, 1938, come defendants Henry L. Long, John P. Kohn, Sr., and W. W. Ramsey, and move the Court for leave to file an amended and supplemental answer; and it appearing that said application is unresisted and is agreed to be all of the parties, it is accordingly ordered, adjudged and decreed that said amended and supplemental answer be filed.

O. K. for entry:

Chas. C. Trabue, Jr., Trabue, Hume, & Armistead, Solicitors for Complainants.

[fol. 81] IN CHANCERY COURT OF DAVIDSON COUNTY, PART ONE

53144

NASHVILLE TRUST COMPANY et al., Executors, etc.,

vs.

WALTER STOKES, JR., Commissioner, etc., et al.

DECREE—April 27, 1938

This cause came on to be regularly heard this April 26, 1938, before the Honorable R. B. C. Howell, Chancellor,

holding Part One of the Chancery Court of Davidson County, upon the original bill, the answer of defendant Walter Stokes, Jr., the answer and cross-bill and amended answer of defendants Henry S. Long and others, together with a stipulation signed by all of the parties that the facts set up and alleged in the original bill and in the answers of all the respondents are true.

And it appearing from the facts admitted that Mrs. Grace C. Scales was a resident of the State of Tennessee and domiciled therein for many years and until the time of her death in 1936. That on the 27th day of December 1917, the said Mrs. Scales, while a resident of Tennessee, executed jointly [fol. 82] with complainant, Title Guarantee Loan & Trust Company, a corporation under the laws of Alabama and having its office and place of business in Birmingham, in said State, a certain indenture or trust agreement by the terms of which she did "grant, sell, transfer and deliver" to the said corporation as Trustee a large amount of stocks and bonds of which said complainant, Title Guarantee Loan & Trust Company, had had possession as Trustee under the provisions of the will of a brother of Mrs. Scales, by the terms of which the said securities became the property of Mrs. Scales on the death of the widow of her brother. That said securities were never taken from the physical possession of said Trust Company at Birmingham, but after the execution of the indenture remained in the possession of the said Trust Company.

That by the terms of said trust indenture as amended by agreement between all the parties interested on January 11th, 1929, Mrs. Scales reserved to herself (1) the net income for life, (2) the right to direct the sale of any or all of the property of the trust and reinvestment of same, but providing that "all property acquired by any reinvestments to be held under the terms and conditions of the trust created by this paragraph," (3) the right to remove the Trustee and substitute another, which was never exercised, and [fol. 83] (4) the right to dispose of all the trust property "by her last will and testament," with a provision "and if she makes disposition by last will and testament, then the trust property is to be hand-led and disposed of as directed in said will," and providing further that in the event she "makes no disposition of the trust property by her last will and testament" the property was still to be held in trust for the benefit of her husband and children.

That Mrs. Scales, in the exercise of her reserved right to dispose of all trust property in the custody of the complainant Title Guarantee Loan & Trust Company, as Trustee, did, by her last will and testament dated January 1, 1926, make disposition of said securities in the hands of said Title Guarantee Loan & Trust Company, as Trustee, by the terms of which she directed that said securities remain in the hands of said Trustee for the benefit of certain persons set forth with considerable elaboration in her said will.

That by the terms of her last will and testament Mrs. Scales appointed the Nashville Trust Company, a corporation of Nashville, Tennessee, as executor of her will as to all property that she owned in the State of Tennessee at the time of her death, and appointed the Title Guarantee Loan [fol. 84] & Trust Company as executor of her last will as to all property "which I may own in the State of Alabama and also as to all property which I may have the right to dispose of by last will and testament in said State."

The complainant, Nashville Trust Company, after the probate, of said will in Davidson County, Tennessee, qualified as Executor of said will, and after said will was probated in Jefferson County, Alabama, complainant Title Guarantee Loan & Trust Company qualified as Executor of said estate; and Letters testamentary were issued to the said Nashville Trust Company by the proper court of Davidson County, Tennessee, and letters testamentary were issued to the said Title Guarantee Loan & Trust Company by the proper court of Jefferson County, Alabama, the county in which Birmingham is located.

That the original bill in this cause was filed by both of the said Executors under Sections 8835-8847, inclusive, of the Tennessee Code of 1932, known as the Tennessee Declaratory Judgments Act, for the purpose of obtaining an adjudication as to whether the State of Alabama or the State of Tennessee is entitled to collect death transfer taxes on that portion of the estate of Mrs. Scales which was in the possession of complainant Title Guarantee Loan & Trust Company, as Trustee, at Birmingham, Alabama, at the time [fol. 85] of her death.

And it appearing to the Court that under the facts set up by the pleadings and admitted by the stipulation filed that said securities in the hands of the Title Guarantee Loan & Trust Company, as Trustee, at the time of the death of

Mrs. Grace C. Scales had a legal situs analogous to the situs of tangible personal property in the State of Alabama:

It is accordingly ordered, adjudged and decreed by the Court that the State of Alabama may legally impose a death transfer or succession tax on said securities held at the time of Mrs. Scales' death in trust by the Title Guarantee Loan & Trust Company, as Trustee, and that only one state may impose death transfer taxes on this portion of said estate.

It is further ordered, adjudged and decreed that the inheritance tax law of Tennessee, in so far as it attempts to impose a tax upon transfers by a resident of Tennessee of "all intangible personal property" (Code Section 1259) is unconstitutional and void under the facts of this case as a violation of the due process of law clause of the Fourteenth Amendment to the Federal Constitution.

[fol. 86] To the foregoing decree the defendant, Walter Stokes, Jr., Commissioner of Finance and Taxation of the State of Tennessee, excepts and prays an appeal to the present term of the Supreme Court at Nashville, which appeal is granted without the execution of a cost bond, as is provided by law in such cases, the said defendant being sued in his official capacity as Commissioner of Finance & Taxation.

The complainants, who sue under the Declaratory Judgments Act, will pay the costs.

O. K. for entry:

Chas. C. Trabue, Jr., Trabue, Hume & Armistead, Solicitors for Complainants.

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[fol. 87] Clerk's certificate to foregoing transcript omitted in printing.



[fol. 88] IN SUPREME COURT OF TENNESSEE, DECEMBER TERM,  
1937

Davidson Equity. No. —

NASHVILLE TRUST COMPANY et al.

VS.

WALTER STOKES, JR., Commissioner, et al,

**Statement of the Case, Assignments of Error, Brief and  
Argument for Walter Stokes, Jr., Appellant—Filed May  
5, 1938**

May it please the court:

STATEMENT OF THE CASE

The Bill

The Nashville Trust Company and the Title Guarantee Loan and Trust Company, executors, filed the original bill under the Declaratory Judgments Act to obtain a declaration as to the taxable situs of certain intangible personal property of which the decedent, Mrs. Grace C. Scales, was the owner at the time of her death. The adjudication [fol. 89] sought was whether the State of Alabama or the State of Tennessee is entitled to levy and collect inheritance taxes or death transfer taxes on the property in question (Tr. p. 6).

The bill avers that in 1917 Mrs. Grace C. Scales, a resident of Tennessee, conveyed certain stocks and bonds to the Title Guarantee Loan & Trust Company of Birmingham, Alabama, as Trustee. By paragraph three of the trust instrument Mrs. Scales directed the trustee to hold certain stocks and bonds in trust, the income to be paid to the settlor during her lifetime. Mrs. Scales reserved to herself the right to direct any encroachment upon the corpus of the trust. She also reserved the right to dispose of the property by will, the trust instrument providing for the disposition to be made of the property in the event Mrs. Scales died intestate. A copy of the trust instrument was made an exhibit to the bill (Tr. pp. 8-20).

The trust instrument also reserved to the settlor, Mrs. Scales, the right to direct the trustee to sell any or all of the trust property, to reinvest the proceeds as directed by the

said Mrs. Scales, selling and reinvesting as often as she deemed fit, the property acquired by any reinvestment to be held under the terms of the trust (Tr. p. 17).

By a subsequent instrument in 1929, Mrs. Scales released [fol. 90] and extinguished her right to encroach upon the corpus of the trust with reference to certain bonds of the Pratt Consolidated Coal Company, which bonds constitute approximately 90% of the trust property in question. Her right to encroach upon the trust property other than such bonds was not impaired or changed (Tr. p. 3).

The trust instrument, in addition to providing that the settlor should receive the life income, reserved to the settlor the right at any time to remove the trustee and to appoint a substitute trustee as often as she saw fit. After such removal, to be accomplished in writing, it was made the duty of the Title Guarantee Loan and Trust Company or any other trustee at once to surrender to the substitute trustee all property held under the trust agreement. (Tr. p. 18.) It was provided that any substitute trustee should hold the property received under the terms and provisions of the trust.

Mrs. Scales died a resident of Tennessee, leaving a will which undertook to dispose of all property held under the trust instrument of 1917, as amended, and which was admitted to probate in the County Court of Davidson County, Tennessee, in 1936. In the exercise of her power of disposition by will Mrs. Scales set up three testamentary trusts, the beneficiaries of such trusts being residents of Tennessee. [fol. 91] A small portion of the property held under the trust of 1917 was by Mrs. Scales' will bequeathed to designated persons, residents of Tennessee, without any testamentary trusts. (Tr. p. 5.) In her will Mrs. Scales appointed the Nashville Trust Company as executor as to such of her property as might be found in Tennessee and she appointed the Title Guarantee Loan & Trust Company executor of such of her property as might be found in Alabama (Tr. p. 4).

The bill avers that the taxing officers of Alabama and of Tennessee are both demanding an inheritance tax upon that portion of Mrs. Scales' estate which during her lifetime was held in trust in Alabama and avers that under the Fourteenth Amendment to the Constitution of the United States one of the states, but not both of them, is entitled to impose an inheritance or succession tax. The bill avers that the

State Tax Commission of Alabama has agreed voluntarily to appear and invoke the jurisdiction of the courts in order to have the rights of the parties adjudicated. The bill seeks a declaration as to what part of the estate is taxable by Tennessee and what part is taxable by Alabama (Tr. p. 6).

#### The Answer of the Alabama Tax Commission

The Alabama Tax Commission filed an answer substantially admitting the facts averred in the original bill and [fol. 92] alleging certain additional facts. The answer avers that the statutes of Alabama impose "upon all net estates passing by will, devise or under the intestate laws of the State of Alabama or otherwise, which are lawfully subject to the imposition of an estate tax by the State of Alabama" a specified tax (Tr. p. 39).

The answer admits that acting pursuant to the said statutes the taxing officers of the State of Alabama have levied and assessed an estate tax upon that portion of the estate of Mrs. Grace C. Scales which was in the state of Alabama under the circumstances set forth.

The answer avers that the stocks and bonds which constituted the corpus of the estate of Mrs. Scales in 1917 were stocks and bonds issued by corporations engaged in business in Alabama and not elsewhere. (Tr. p. 42.) The answer avers that Mrs. Scales had acquired such stocks and bonds by reason of the death of her brother and that she established the trust in 1917 without ever having obtained the physical possession of said securities which had theretofore been in the actual custody of the Title Guarantee Loan & Trust Company. The answer avers that said stocks and bonds have at all times since the death of Mrs. Scales' brother in 1905 been physically in the State of Alabama in the custody of said Title Guarantee Loan & Trust Company.

[fol. 93] The answer avers that the stocks and bonds constituting the corpus of the trust created by Mrs. Scales in 1917 have acquired "a business situs or a situs analogous to that of tangible personal property within the State of Alabama", so as to be subject to the estate tax imposed by Alabama and to the succession or inheritance tax of no other state (Tr. p. 44).

The answer avers that to construe the inheritance tax law of Tennessee as imposing a tax upon the stocks and bonds "which acquired a business situs in the State of Alabama, as hereinabove set forth" would be to violate the due process

of law clause of the Fourteenth Amendment (Tr. p. 44). The answer admits that the State Tax Commission of Alabama appears voluntarily to invoke the jurisdiction of the Court for the purpose of having the rights of the State of Alabama adjudicated and avers that such voluntary appearance is made with the consent and approval of the Governor and of the Attorney-General of Alabama as required by the statutes of said State (Tr. p. 46).

The answer by way of cross-bill seeks a decree in favor of the State of Alabama for the amount of tax alleged to be due that state.

[fol. 94] Answer of Commissioner of Finance and Taxation  
of the State of Tennessee

The answer of the Commissioner of Finance and Taxation of the State of Tennessee admitted the averments of fact in the original bill and asked a declaration of the court that under such facts the intangible personal property of the decedent, Mrs. Scales, a resident of Tennessee, be declared subject to the inheritance tax of Tennessee. The answer admitted that such intangible property was not subject to a succession or transfer tax in more than one state (Tr. p. 49).

Amended Answer for Alabama

At the hearing, the answer of the State Tax Commission of Alabama was amended so as to aver that under the trust instrument exhibited to the original bill the control of the securities which were the subject matter of the trust passed completely to the Title Guarantee Loan & Trust Company and that such was the status of the securities at the time of the death of Mrs. Scales. The amended answer averred that Mrs. Scales never exercised the right given her in the trust instrument to remove the Title Guarantee Loan & Trust Company as Trustee. The amended answer averred that if a substituted trustee in another state had been named [fol. 95] the trust assets could have been removed from Alabama only in compliance with certain statutes of Alabama which are copied in the amended answer (Tr. p. 52).

The Decree

The decree recited that the cause was heard upon a stipulation of all the parties "that the facts set up and alleged



in the original bill and in the answers of all the respondents are true."

After reciting substantially the facts hereinbefore set forth the decree adjudged that the securities held by the Title Guarantee Loan & Trust Company as trustee at the time of the death of Mrs. Scales "had a legal situs analogous to the situs of tangible personal property in the State of Alabama." It was accordingly decreed and declared that the State of Alabama may legally impose a death transfer or succession tax on such securities. It was further decreed and declared that in so far as the inheritance tax law of Tennessee attempts to impose a tax upon the transfer of such securities it is "unconstitutional and void under the facts of this case as a violation of the due process of law clause of the Fourteenth Amendment to the Federal Constitution" (Tr. p. 57).

The decree granted to Walter Stokes, Jr., Commissioner [fol. 96] of Finance and Taxation of the State of Tennessee, an appeal without the execution of a cost bond, the said defendant being sued in his official capacity as Commissioner of Finance and Taxation (Tr. p. 60).

The appellant, Walter Stokes, Jr., Commissioner of Finance and Taxation of the State of Tennessee, now assigns errors.

#### ASSIGNMENTS OF ERROR

##### First Assignment

The Chancellor erred in declaring and decreeing that the intangible personal property of Mrs. Scales in the hands of the Title Guarantee Loan & Trust Company as trustee had a legal situs analogous to the situs of tangible personal property in Alabama and was subject to a death transfer or succession tax in Alabama (Tr. p. 60).

He should have declared and decreed that for purposes of death transfer or succession taxes the situs of such intangible personal property was Tennessee, the residence of Mrs. Scales at the time of the creation of the trust and at the time of her death.

[fol. 97]

##### Second Assignment

The Chancellor erred in declaring and decreeing that the inheritance tax law of Tennessee, in so far as it attempts to impose a tax under the facts of this case, is unconstitu-

tional and void as a violation of the due process of law clause of the Fourteenth Amendment to the Federal Constitution (Tr. p. —).

He should have declared and decreed that the inheritance tax law of Tennessee, which provides for a tax upon transfers of all intangible personal property by will of a resident of Tennessee, is valid and constitutional.

Respectfully submitted, Edwin F. Hunt, Assistant  
Atty. General. Dudley Porter, Jr., Field Attorney.

[fol. 98] IN SUPREME COURT OF TENNESSEE

Davidson Equity

NASHVILLE TRUST COMPANY et al.

VS.

WALTER STOKES, Commissioner et al.

OPINION—Filed June 11, 1938

The question to be determined in this cause is the taxable situs of certain intangible personal property belonging to Mrs. Grace C. Scales, a resident of Tennessee, and placed by her in the hands of the Title Guarantee Loan & Trust Company, an Alabama corporation with its principal place of business at Birmingham in that State, under a trust agreement executed by her in December, 1917, and amended in 1929, naming her son and daughter as beneficiaries.

Mrs. Scales was domiciled in Tennessee for many years and until the time of her death in 1936. Both the State of Tennessee and the State of Alabama asserted the right to levy and collect inheritance or death transfer taxes on the intangibles in the hands of the trustee in Alabama. The bill herein was filed under the Declaratory Judgments Act, and the declaration sought is which of these states is entitled to levy and collect such taxes on the property in [fol. 99] question. It is agreed that both States may not tax the property.

It appears that the Title Guarantee Loan & Trust Company had possession of the securities here involved, as

trustee, under the provisions of the will of a brother of Mrs. Scales, by the terms of which the securities became the property of Mrs. Scales on the death of the widow of the brother. These securities were never taken from the physical possession of the trustee of Mrs. Scales, but remained in its possession under the terms of the trust agreement executed by Mrs. Scales in December, 1917. Under this agreement, Mrs. Scales did "grant, sell, transfer, assign and deliver" to the trustee the securities in question, with power to "hold, manage and look after" the same. Mrs. Scales reserved to herself (1) the net income for life; (2) the right to direct the sale of any or all the securities in the trust and reinvestment of the same, but providing that "all property acquired by any reinvestment to be held under the terms and conditions of the trust created by this paragraph"; (3) the right to remove the trustee and substitute another, which was never exercised; (4) the right to dispose of all the trust property by last will and testament; and (5) the right to direct any encroachment upon the corpus of the trust at any time that in her opinion the net income from the property was insufficient for her comfortable support and maintenance; but by an amendment in 1929 Mrs. Scales [fol. 100] extinguished her right to encroach upon the corpus with reference to certain bonds of the Pratt Consolidated Coal Company, which bonds constitute the major portion of the trust property.

Mrs. Scales, by last will and testament dated January 1, 1926, made disposition of the securities in the hands of the trustee, and directed that the same remain in the hands of the trustee for the benefit of certain persons named in the will. She appointed the Nashville Trust Company, a corporation, executor "as to all property which I may own in the State of Tennessee at the time of my death; and I appoint the Title Guarantee Loan & Trust Company, a corporation of Birmingham, Alabama, as executor of this will as to all property which I may own in the State of Alabama, and also as to all property which I may have the right to dispose of by last will and testament in said state."

The chancellor found and decreed that under the facts set up in the pleadings and admitted by stipulation that the securities in the hands of the Title Guarantee Loan & Trust Company, as trustee, at the time of the death of Mrs. Scales had a legal situs analagous to the situs of tangible personal property in the State of Alabama and were subject to the

death transfer or successive tax of that state. He further held and decreed that the inheritance tax law of Tennessee, in so far as it attempts to impose a tax upon transfer by a resident of Tennessee of "all intangible personal property" (Code 1259) is unconstitutional and void under the [fol. 101] facts of this cause as a violation of the due process clause of the 14th Amendment to the Federal Constitution.

From this decree Walter Stokes, Jr., Commissioner of Finance and Taxation of Tennessee, has appealed to this court, and by proper assignments asserts that the chancellor was in error in finding and decreeing as above set out.

State taxation of anything not within its jurisdiction is in violation of the 14th Amendment. *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S., 204, 74 L. ed., 371. Under the ancient maxim *mobilia sequuntur personam*, the situs of personal property is, generally speaking, the domicile of the owner. *Blodgett v. Silberman*, 277 U. S., 1, 72 L. ed., 749; *First National Bank v. Maine*, 284 U. S. 312, 76 L. ed. 313. In the latter case, after pointing out that due to the vast increase in the extent and variety of tangible personal property not immediately connected with the person of the owner, the maxim has gradually yielded to the law of the place where the property is kept and used, the court said:

"But in respect of intangible property, the rule is still convenient and useful, if not always necessary; and it has been adhered to as peculiarly applicable to that class of property."

And in *Blodgett v. Silberman*, *supra*, in determining the [fol. 102] taxable situs of certain intangibles, the court said:

"At common law the maxim '*mobilia sequuntur personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approved itself to legal philosophic test or not."



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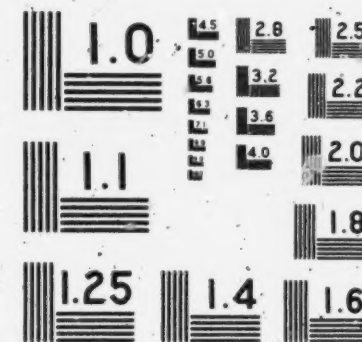
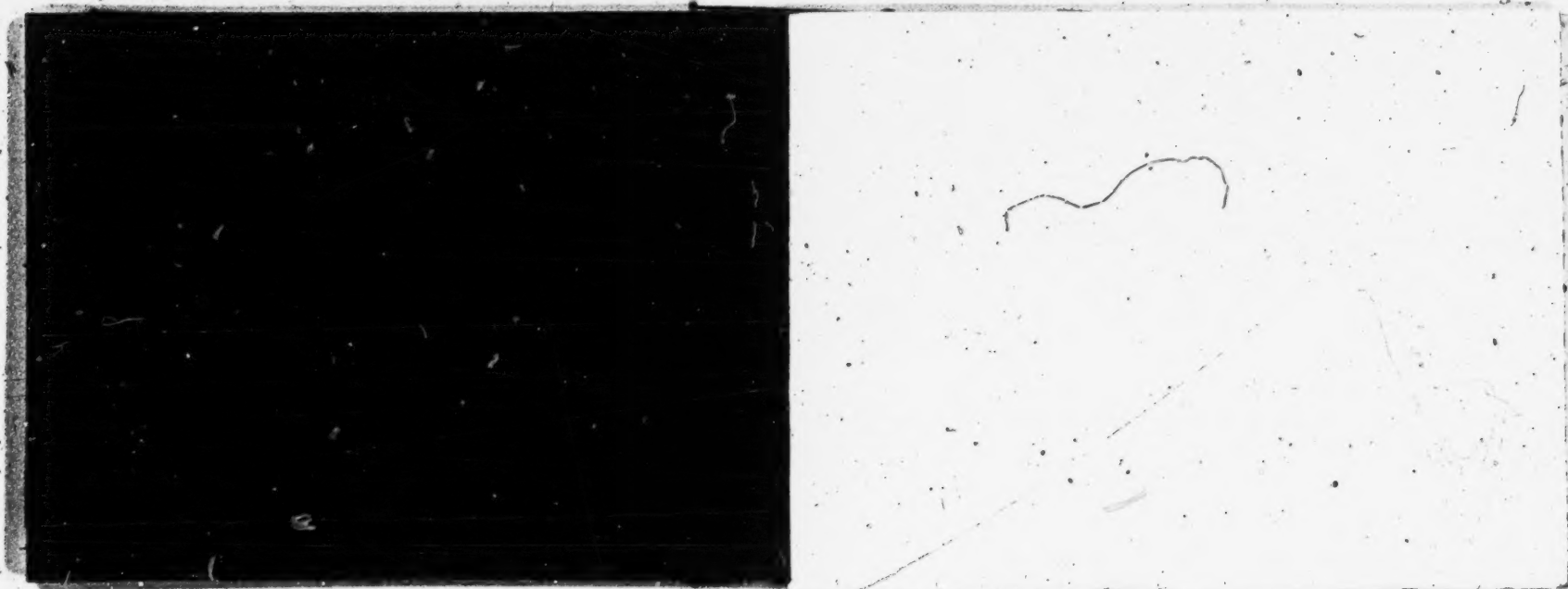
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# 2



In *First National Bank v. Maine*, *supra*, the court said:

"We do not overlook the possibility that shares of stock, as well as other intangibles, may be so used in a state other than that of the owner's domicile as to give them a situs analogous to the actual situs of tangible personal property. See *Farmers Loan & T. Co. Case*, *supra*. That question heretofore has been reserved, and it still is reserved to be [fol. 103] disposed of when, if ever, it properly shall be presented for our consideration."

Were the securities here in question so used in the State of Alabama as to give them a situs analogous to the actual situs of tangible personal property? We think not. They were not employed in any business of Mrs. Scales, nor was the trustee authorized under the trust agreement to employ the securities in any business of its own, or in any other person's business. Under the terms of the trust, the trustee was to "hold, manage and look after" the securities, under the reserved powers of Mrs. Scales. The trustee had the legal title to the securities, but only for the purposes of the trust. It had no beneficial interest in the trust property, other than a commission of 5 per cent on income in compensation for its services as trustee.

In *Farmers Loan & Trust Co. v. Minnesota*, *supra*, the court said:

"*New Orleans v. Stempel*, 175 U. S. 309, 44 L. Ed. 174, 20 Sup. Ct. Rep. 110; *Bristol v. Washington County*, 177 U. S. 133, 44 L. ed. 701, 20 Sup. Ct. Rep. 585, and *Liverpool & L. & G. Ins. Co. v. Board of Assessors*, 221 U. S. 346, 55 L. ed. 762, L. R. A. 1915C, 903, 31 Sup. Ct. Rep. 550, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they [fol. 104] have become integral parts of some local business."

As above pointed out, the securities here in question were not employed so as to become a part of any business in Alabama.

Mrs. Scales reserved the right, which she exercised, to dispose of all of the trust property by will. When she died leaving a will disposing of the trust property, the situation was the same as though there had never been a trust. The property passed under the will as the absolute property of

Mrs. Scales, a resident of Tennessee. The inheritance tax law of Tennessee with respect to residents of this State imposes a tax upon "all intangible personal property" transferred "by a will." (Code 1259-1260.) We are unable to see how on this state of facts Tennessee could be denied the right to levy and collect the tax.

Counsel for the State of Alabama lean heavily on the case of *Safe Deposit & Trust Co. v. Virginia*, 280 U. S. 83, 74 L. ed. 180. This was a case where the State of Virginia attempted to levy an ad valorem tax upon securities in the hands of a trustee in Maryland when no person in Virginia had a present right to their enjoyment or power to remove them. The facts, briefly stated, were that the truster, a resident of Virginia, established a trust with a Maryland corporation as trustee. The trust was for the two infant sons of the truster, [fol. 105] each being given a one-half interest. The trustee was to collect the income from the securities and accumulate the net income for the benefit of the two sons, and when each of them reached twenty-five years of age to pay over to such beneficiary his interest in the accumulated sum, both principal and income. If either son died before receiving his share without issue, then the survivor took all. No provision was made for the death of both sons under twenty-five without issue. The trustee was authorized to change the investments. The truster reserved the right to revocation, but died without having exercised it. Administration of his estate was had in Virginia, and his two sons were domiciled there. Except as changed by reinvestment, the trustee had continued to hold the original securities in Baltimore, Maryland, and paid the taxes regularly demanded by the city and state on account of them. The Supreme Court of Virginia sustained the ad valorem tax levied by that state on the securities in Maryland. In reversing this holding, the Court said:

"Manifestly, the securities are subject to taxation in Maryland where they are in the actual possession of the trust company—holder of the legal title. That they are property within Maryland is not questioned. *De Ganay v. Lederer*, 250 U. S. 376, 382, 63 L. ed. 1042, 1044, 39 Sup. Ct. Rep. 524. Also, nobody within Virginia has present right to their control or possession, or to receive income there—[fol. 106] from, or to cause them to be brought physically within her borders. They have no legal situs for taxation

in Virginia unless the legal fiction *mobilia sequuntur personam* is applicable and controlling, \* \* \*

"Ordinarily this court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of intangible personal property for taxation. *Blodgett v. Silberman*, 277 U. S. 1, 72 L. ed. 749, 48 Sup. Ct. Rep. 410. But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere and ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation or otherwise (citing cases). Here, where the possessor of the legal title holds the securities in Maryland, thus giving them a permanent situs for lawful taxation there, and no person in Virginia has present right to their enjoyment or power to remove them, the fiction must be disregarded. It plainly conflicts with fact; the securities did not and could not follow any person domiciled in Virginia. Their actual situs is in Maryland and cannot be changed by the *cestui que trust*."

The situation in the instant cause is entirely different [fol. 107] from that presented in *Safe Deposit & Trust Co. v. Virginia*. Here the trust terminated on the death of Mrs. Scales, she having exercised her right to dispose of the trust property by will. She was a resident of Tennessee, as were the beneficiaries under her will. No question of double taxation is presented, as was true in the *Safe Deposit* case.

Our conclusion is that the decree of the chancellor must be reversed and a declaration entered here in accordance with this opinion.

By consent of the parties the costs of the cause will be paid by the Title Guarantee Loan & Trust Company and the Nashville Trust Company, as executors, who filed the bill under the *Declaratory Judgements Act*.

D. W. DeHaven, Judge.

[fol. 108] IN SUPREME COURT OF TENNESSEE

Davidson Equity. Reversed

NASHVILLE TRUST COMPANY et al.

VS.

WALTER STOKES, JR., Commissioner, et al.

DECREE—June 11, 1938

This cause came on to be heard on this June 11th, 1938, and former days of the term upon the transcript of the



record from the Chancery Court of Davidson County, Tennessee, the assignments of error, filed by appellant and the briefs filed by appellant and appellees, and arguments of counsel, upon consideration of all of which the Court is of opinion that the decree of the Chancellor should be and is reversed and that a declaratory decree should be and is entered in this Court declaring taxable in Tennessee and not taxable in Alabama for purposes of death succession or transfer taxes, the intangible property disposed of by the last will and testament of Mrs. Grace C. Scales, a deceased resident of Tennessee, for the reasons set out and stated in the written opinion is hereby made a part of this decree.

The costs of the case will be paid by the Title Guarantee Loan & Trust Company and the Nashville Trust Company as executors, who filed the bill under the Declaratory Judgments Act.

[fol. 109] IN SUPREME COURT OF TENNESSEE

[Title omitted]

#### PETITION FOR APPEAL

Now come the State of Alabama, by and through the State Tax Commission of the State of Alabama, and Henry S. Long, Chairman, and John P. Kohn, Sr. and W. W. Ramsey, Associates, as members of said Tax Commission of the State of Alabama, and Nashville Trust Company, a banking corporation of Tennessee, and Title Guarantee Loan & Trust Company, a banking corporation of Alabama, as Executors of the Estate of Mrs. Grace C. Scales, deceased, and respectfully shows:

#### I

Petitioners were the appellees in the above entitled cause in its submission to this Court on appeal from Part I of the Chancery Court of Davidson County, Tennessee, in Equity.

#### II

The Nashville Trust Company and the Title Guarantee Loan & Trust Company, as executors of the Estate of Mrs. Grace C. Scales, deceased, filed their bill in Part I of the

[fol. 110] Chancery Court of Davidson County, Tennessee, on the — day of —, 1938, making Walter Stokes, Jr., as Commissioner of Finance and Taxation of the State of Tennessee, and Henry S. Long, Chairman, and John P. Kohn, Sr., and W. W. Ramsey Associates, as members comprising the State Tax Commission of the State of Alabama, joint defendants in an action for a declaratory judgment to determine the respective rights of the States of Alabama and Tennessee to tax the succession or inheritance of certain intangible property belonging to the estate of their said testator. Each of the defendants appeared and the Tax Commission of the State of Alabama filed a cross complaint seeking to collect the sum of Two Thousand Two Hundred and Two & 42/100 - (\$2,202.42) Dollars, with interest, as taxes due the State of Alabama, and a declaratory decree establishing the right and power of the State of Alabama to collect an inheritance or succession tax on said intangibles and denying the right and power of the State of Tennessee to collect such a tax was rendered by said Chancery Court.

### III

An appeal from said decree to the Supreme Court of the State of Tennessee was taken by the said Walter Stokes, Jr., as Commissioner of Finance and Taxation of the State of Tennessee, and the said decree of the Chancery Court of Davidson County was reversed by the Supreme Court of Tennessee on the 11th day of June, 1938, which was a final decree of the highest court of the State of Tennessee in which a decision in the suit could be had.

### IV

In said cause there is drawn in question the validity of a statute of the State of Tennessee, Code of Tennessee 1932, Code Sections 1259 and 1260, on the ground of its being repugnant to Article 1, Section 14, of the Constitution of the United States, and the decision is in favor of its validity.

Wherefore, Petitioners pray for the allowance of an appeal from the Supreme Court of Tennessee to the Supreme Court of the United States in order that the decision of the said Supreme Court of the State of Tennessee may be examined and reversed, and also prays that a transcript [fol. 111] of the record and proceedings and the papers in

this case, duly authenticated by the Clerk of this Court, may be sent to the Supreme Court of the United States as provided by law.

The errors upon which each of your petitioners claims to be entitled to an appeal are those above indicated, and more fully set out in the assignments of errors filed herewith.

Dated August 30, 1938.

A. A. Carmichael, as Attorney General of the State of Alabama; Ray Rushton, as Special Attorney for the State Tax Commission of the State of Alabama; Chas. C. Trabue, Jr., as Attorney for Nashville Trust Company and Title Guarantee Loan & Trust Company as Executors of the Estate of Mrs. Grace C. Scales, Deceased, Attorneys for Petitioners and Proposed Appellants.

[fol. 112] IN SUPREME COURT OF TENNESSEE

{Title omitted}-

ASSIGNMENT OF ERRORS BY THE STATE OF ALABAMA THROUGH  
THE STATE TAX COMMISSION OF ALABAMA

The said State of Alabama and State Tax Commission of the State of Alabama, and Henry S. Long, John P. Kohn, Sr. and W. W. Ramsey, as members of the State Tax Commission of Alabama, assign the following errors in the records and proceedings in said cause:

I

The Supreme Court of Tennessee erred in declaring and decreeing that the inheritance tax law of Tennessee, as interpreted and sought to be enforced by the taxing authority thereof, insofar as it attempts to impose a tax under the facts in this case upon intangible personal property situated in Alabama, is not unconstitutional and void and in violation of the due process clause of Section 1 of the 14th Amendment to the Constitution of the United States. The Supreme Court should have declared and decreed that the inheritance tax law of Tennessee, which provides for a tax upon transfer of "all intangible personal property" by

will of a resident of Tennessee is invalid and under said Amendment void insofar as it permits taxation of property not within the jurisdiction of the State of Tennessee.

[fol. 113]

## II

The Supreme Court of Tennessee erred in declaring and decreeing that the State of Alabama has no right or power to tax the intangible personal property in the possession of the Title Guarantee Loan & Trust Company as Trustee within Alabama, and that the State of Tennessee had the right to tax such under Code of Tennessee 1932, Sections 1259, 1260, despite the provisions of Article 1 of Amendment XIV of the United States Constitution, which forbids any state to tax property not within its jurisdiction.

## III

The Supreme Court of Tennessee erred in declaring and decreeing that, despite the provisions of Section 1 of the XIV Amendment to the Constitution of the United States, Sections 1259, 1260, of the Code of Tennessee 1932 imposing an inheritance or succession tax upon "all intangible personal property" of the decedent Mrs. Scales in the hands of the Title Guarantee Loan & Trust Company as Trustee in the State of Alabama was valid and enforceable as to the bonds in possession of the Trustee in Alabama. The Court should have declared and decreed that for purposes of death transfer or succession taxes the situs of such intangible personal property was in Alabama where said property had acquired a legal situs analogous to the situs of personal property, and that it was taxable in the State of Alabama alone.

## IV

The Supreme Court of Tennessee erred in declaring and decreeing that Sections 1259, 1260 of the Code of Tennessee 1932, being part of the Inheritance Tax Law of said State, were constitutional and valid and did not violate Section 1 of the XIV Amendment to the Constitution of the United States.

For which errors these appellants pray that the said decree of the Supreme Court of the State of Tennessee,



dated June 11, 1938, in the above entitled cause, be reversed and a decree rendered in favor of these said appellants.

Dated August 30, 1938.

[fol. 114] A. A. Carmichael, as Attorney General of the State of Alabama. Ray Rushton, as Special Attorney for the State Tax Commission of the State of Alabama.

[fol. 115] IN SUPREME COURT OF TENNESSEE

[Title omitted]

ASSIGNMENT OF ERRORS BY THE EXECUTORS OF THE ESTATE OF  
MRS. GRACE C. SCALES, DECEASED

The said Nashville Trust Company and Title Guarantee Loan & Trust Company as Executors of the Estate of Mrs. Grace C. Scales, deceased, assign the following errors in the records and proceedings in said cause:

I

The Supreme Court of Tennessee erred in declaring and decreeing that the inheritance tax law of Tennessee, as interpreted and sought to be enforced by the taxing authority thereof, insofar as it attempts to impose a tax under the facts in this case upon intangible personal property situated in Alabama, is not unconstitutional and void and in violation of the due process clause of Section 1 of the 14th Amendment to the Constitution of the United States. The Supreme Court should have declared and decreed that the inheritance tax law of Tennessee, which provides for a tax upon transfer of "all intangible personal property" by will of a resident of Tennessee is invalid and under said Amendment void insofar as it permits taxation of property not within the jurisdiction of the State of Tennessee.

II

The Supreme Court of Tennessee erred in declaring and [fol. 116] decreeing that the State of Alabama has no right or power to tax the intangible personal property in the possession of the Title Guarantee Loan & Trust Company as Trustee within Alabama, and that the State of Tennessee

had the right to tax such under Code of Tennessee 1932, Sections 1259, 1260, despite the provisions of Article 1 of Amendment XIV of the United States Constitution, which forbids any state to tax property not within its jurisdiction.

### III

The Supreme Court of Tennessee erred in declaring and decreeing that, despite the provisions of Section 1 of the XIV Amendment to the Constitution of the United States, Sections 1259, 1260 of the Code of Tennessee 1932 imposing an inheritance or succession tax upon "all intangible personal property" of the decedent Mrs. Scales in the hands of the Title Guarantee Loan & Trust Company as Trustee in the State of Alabama was valid and enforceable as to the bonds in possession of the Trustee in Alabama. The Court should have declared and decreed that for purposes of death, transfer or succession taxes the situs of such intangible personal property was in Alabama where said property had acquired a legal situs analogous to the situs of personal property, and that it was taxable in the State of Alabama alone.

### IV

The Supreme Court of Tennessee erred in declaring and decreeing that Sections 1259, 1260 of the Code of Tennessee, 1932, being part of the Inheritance Tax Law of said State, were constitutional and valid and did not violate Section 1 of the XIV Amendment to the Constitution of the United States.

For which errors these appellants pray that the said decree of the Supreme Court of the State of Tennessee, dated June 11, 1938, in the above entitled cause, be reversed and a decree rendered in favor of these said appellants.

Dated September 6, 1938.

Chas. C. Trabue, Jr., Attorney for Nashville Trust Company and Title Guarantee Loan & Trust Company, Executors of the Estate of Mrs. Grace C. Scales, Deceased.

[fol. 117] IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER ALLOWING APPEAL

The petition of the State of Alabama, by and through the State Tax Commission of the State of Alabama, and Henry S. Long, Chairman, and John P. Kohn, Sr. and W. W. Ramsey, Associates, as members of said Tax Commission of the State of Alabama, and Nashville Trust Company, a banking corporation of Tennessee, and Title Guarantee Loan & Trust Company, a banking corporation of Alabama, as Executors of the Estate of Mrs. Grace C. Scales, deceased, for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of Tennessee, and the assignment of errors filed therewith, and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Supreme Court of Tennessee as prayed in said petition, and that the clerk of the Supreme Court of Tennessee shall prepare and certify a transcript of the proceedings and record in the above cause and transmit the same to the Supreme Court of the United States within — days from the date hereof.

It is further ordered that said appellants shall give good and sufficient security in the sum of Five Hundred (\$500.00) dollars that they shall prosecute said appeal to effect, and if said appellants fail to make their plea good they shall [fol. 118] answer all damages and costs.

The said appellants now presenting bond in the sum of Five Hundred (\$500.00) Dollars with United States Fidelity & Guaranty Company of Maryland as surety, it is

Ordered that same be and is hereby approved.

Dated this September 3, 1938.

Grafton Green, Chief Justice of the Supreme Court of Tennessee. (Seal.)

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[fols. 119-120] Citation, in usual form, showing service on Walter Stokes, Jr., et al., omitted in printing.

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[fols. 121-122] Bond on appeal for \$500.00, approved September 7, 1938, omitted in printing.

[fol. 123] IN SUPREME COURT OF TENNESSEE

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of Said Court:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal in the above styled cause, and to include in said transcript of record the following papers and exhibits, to-wit:

1. The transcript on appeal from Part I of the Chancery Court of Davidson County, Tennessee, including specifically:

(a) The bill, including all exhibits thereto;

(b) The answer of defendant Walter Stokes, Jr., as Commissioner of Finance and Taxation of the State of Tennessee, including any exhibits thereto;

(c) The answer and cross bill of Henry S. Long and associates, members comprising the State Tax Commission of the State of Alabama, with exhibits;

(d) The amendment to the answer and cross bill of said Henry S. Long and associate members, and order permitting the filing thereof;

(e) The stipulation of all parties that the facts set up and alleged in the bill and answers of all defendants are true;

[fol. 124] (f) The decree of the Honorable R. B. C. Howell, Chancellor of Part I of the Chancery Court of Davidson County, Tennessee;

(g) All documents and papers filed on behalf of Walter Stokes, Jr., appellant, to perfect appeal to the Supreme Court of Tennessee, including specifically (1) statement of the case and (2) assignments of error;

(h) The opinion and final decree of the Supreme Court of Tennessee filed June 11, 1938;

2. The petition for appeal to the Supreme Court of the United States;

3. The assignment of errors by parties representing the State of Alabama;



4. The assignment of errors by parties representing the Nashville Trust Company and the Title Guarantee Loan & Trust Company as Executors of the estate of Mrs. Grace C. Scales, deceased;

5. The order allowing appeal and fixing the amount of bond;

6. Citation on appeal to Walter Stokes, Jr., signed by the Chief Justice of the Supreme Court of Tennessee;

7. The bond for costs of appeal and approval thereof;

8. This praecipe, with acknowledgment and waiver of counter praecipe.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 11th day of September, 1938.

Dated 30 August, 1938.

A. A. Carmichael, as Attorney General of the State of Alabama; Ray Rushton, as Special Attorney for the State Tax Commission of the State of Alabama; Chas. C. Trabue, Jr., as Attorney for Nashville Trust Company and Title Guarantee Loan & Trust Company, Attorneys for Appellants.

[fol. 125] Service of the above praecipe is accepted and acknowledged and counter praecipe waived.

This 6 day of September, 1938.

Edwin F. Hunt, Assistant Attorney General of Tennessee; Dudley Porter, Field Attorney of the State of Tennessee, Attorneys for Appellee.

[fols. 126-128] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 129] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND PART OF  
RECORD TO BE PRINTED—Filed September 10, 1938

Come now the appellants in the above entitled cause and adopt their respective assignments of error as their state-

ment of the points to be relied upon, and state that the whole of the record as filed is necessary for the consideration of the case.

Dated this 6th day of September, 1938.

A. A. Carmichael, as Attorney General of the State of Alabama; Ray Rushton, as Special Attorney for the State Tax Commission of the State of Alabama; Chas. C. Trabue, Jr., as Attorney for Nashville Trust Company and Title Guarantee Loan & Trust Company, Executors of the Estate of Mrs. Grace C. Scales, Decéased, Counsel for Appellants.

[fol. 130] [File endorsement omitted.]

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Endorsed on cover: File No. 42,824. Tennessee Supreme Court. Term No. 339. Henry S. Long, Chairman, and John P. Kohn, Sr., and W. W. Ramsey, as Members Comprising the State Tax Commission of the State of Alabama, et al., appellants, vs. Walter Stokes, Jr., as Commissioner of Finance and Taxation of the State of Tennessee. Filed September 10, 1938. Term No. 339, O. T., 1938.

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